

Appendix E

Model Franchise Collection Service Agreement

**MODEL FRANCHISE COLLECTION SERVICE
AGREEMENT**

**Executed Between the City of
and**

This day of 20

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CITY OF

This Agreement made and entered into this day of 20 , by and between the City of , State of California, hereinafter referred to as "CITY" and , A California corporation, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS; the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for garbage collection within their jurisdiction; and,

WHEREAS; the State of California has found and declared that the amount of garbage generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency, and all local agencies, to promote disposal site diversion and to maximize the use of feasible garbage reduction, re-use, recycling, and composting options in order to reduce the amount of garbage that must be disposed of in disposal sites; and,

WHEREAS; pursuant to California Public Resources Code Section 40059(a) as may be amended from time to time, the CITY has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified contractor to provide for the collection of garbage, recyclable materials, and organic waste materials, except for collection of materials excluded in the CITY'S Municipal Code, and other services related to meeting the Act's 50 percent diversion goal and other requirements of the Act; and,

WHEREAS; the CITY further declares its intent to regulate and set the maximum rates CONTRACTOR will charge customers for the collection, transportation, processing, recycling, composting, and/or disposal of garbage, recyclable materials, and organic waste materials; and

WHEREAS; the City Council has determined through a competitive procurement process for collection services that CONTRACTOR, by demonstrated experience, reputation and capacity, is qualified to provide for the collection of garbage, recyclable materials, and organic waste materials within the corporate limits of the CITY, the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and City Council desires that CONTRACTOR be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS; the CONTRACTOR, through its proposal to the CITY, has proposed and represented that it has the ability and capacity to provide for the collection of garbage, recyclable materials, and organic waste materials within the corporate limits of the CITY; the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and the processing of materials; and

WHEREAS, this Agreement has been developed by and is satisfactory to the CITY and the CONTRACTOR,

Now, therefore, in consideration of the mutual covenants, conditions and consideration contained herein, the CITY and CONTRACTOR hereby agree as hereinafter set forth:

ARTICLE 1. Definitions

For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement", the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained in the CITY Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.01 AB 939. The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et al.), as amended from time to time.

1.02 Agreement. The written document and all amendments thereto, between the CITY and the CONTRACTOR, governing the provision of Collection Services as provided herein.

1.03 Agreement Year. Each twelve (12) month period from July 1st to June 30 unless otherwise extended by the CITY according to Article 2 of this Agreement.

1.04 Alternative Daily Cover (ADC). Disposal Facility cover material, other than Organic Waste and at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of the California Code of Regulations.

1.05 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.06 Brown Goods. Electronic equipment such as stereos, televisions, VCR's, Personal Data Assistants (PDAs), telephones, and other similar items not containing cathode ray tubes (CRTs).

1.07 Business Service Unit. All retail, professional, office, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.08 CITY. The City of _____, California.

1.09 City Collection Service. City Garbage Collection Service, City Recycling Collection Service, and City Organic Waste Collection Service.

1.10 City Debris Box Collection Service. The Collection in Debris Boxes of City Garbage, Recyclable Materials, Organic Waste, or Construction and Demolition Debris generated by City Services Units, Collected and delivered by the CONTRACTOR to an appropriate processing facility or Disposal Facility.

1.11 City Garbage Collection Service. The Collection of Garbage generated from City Service Units that is Collected and delivered to the Disposal Facility by the CONTRACTOR.

1.12 City Organic Waste. Green Waste and Food Waste separated at the source of generation for inclusion in the City Organic Waste Collection Service program.

1.13 City Organic Waste Collection Service. The Collection of Organic Waste, generated from City Service Units, that is Collected and delivered to the Organic Waste Processing Facility by the CONTRACTOR.

1.14 City Recycling Collection Service. The Collection of Recyclable Materials, generated from City Service Units, that is Collected and delivered to the Materials Recovery Facility by the CONTRACTOR.

1.15 City Representative. The City Manager, or his/her designee, authorized to administer and monitor the provisions of this Agreement.

1.16 City Service Unit. Those CITY properties or locations as set forth in Exhibit 2, "City Facilities", which is attached to and included in this Agreement.

1.17 Collection. The process whereby Garbage, Recyclable Materials and Organic Waste are removed and transported to the Disposal Facility, an Organic Waste Processing Facility, or a Materials Recovery Facility, as appropriate.

1.18 Collection Services. Single-Family Collection Service (SFD), Multi-family Collection Service (MFD), City Collection Service, and Commercial Collection Service.

1.19 Commercial Collection Service. Commercial Garbage Collection Service, Commercial Recycling Collection Service, Commercial Organic Waste Collection Service, and Commercial Debris Box Collection Service.

1.20 Commercial Debris Box Collection Service. The Collection of Commercial Garbage, Recyclable Materials, Organic Waste, or Construction and Demolition Debris by the CONTRACTOR from Commercial Service Units in the Service Area, and the delivery of collected Commercial Debris Boxes to an appropriate processing facility or disposal facility.

1.21 Commercial Organic Waste. Green Waste and Food Waste separated at the source of generation for inclusion in the Commercial Organic Waste Collection Service program.

1.22 Commercial Organic Waste Collection Service. The Collection of Commercial Organic Waste by the CONTRACTOR from Commercial Service Units in the Service Area, and the delivery of that Commercial Organic Waste to an Organic Waste processing facility.

1.23 Commercial Recycling Collection Service. The Collection of Recyclable Materials by the CONTRACTOR from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility and the processing and marketing of those Recyclable Materials.

1.24 Commercial Service Unit. Business Service Units, and Mixed Use Dwellings that utilize a Garbage Cart or Bin for the accumulation and set-out of Garbage.

1.25 Commercial Garbage Collection Service. The Collection of Garbage by the CONTRACTOR, from Commercial Service Units in the Service Area, and the delivery of that Garbage to the Disposal Facility.

1.26 Compactor. Any Debris Box Container or Bin, which has a compaction mechanism, whether stationary or mobile.

1.27 Composting. The controlled biological decomposition of Organic Waste into a specific mixture of decayed organic matter used for fertilizing or soil conditioning.

1.28 Construction and Demolition Debris. Commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, formica, granite, iron, lead, linoleum, marble,

plaster plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. Construction and Demolition Debris does not include Exempt Waste.

1.29 CONTRACTOR.

1.30 County. Marin County, California.

1.31 Customer. Means a Service Recipient that receives Collection Services under the terms of this Collection Service Agreement.

1.32 Debris Box Collection Service. Collection utilizing 10 - 40 cubic yard containers, on a temporary or permanent basis, and provided to Service Units for the Collection of Garbage, Recyclable Materials, Organic Waste, and Construction and Debris Materials, and for the delivery of that material to an appropriate facility.

1.33 Debris Box Container. A metal container that is normally tipped loaded onto a motor vehicle and transported to an appropriate facility.

1.34 Disposal Facility. The _____ Landfill located in _____, California for the disposal, or processing as appropriate, of Garbage and other materials as appropriate.

1.35 Dwelling Unit. Any individual living unit in a single family dwelling (SFD) or multi-family dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a Hotel or Motel.

1.36 E-Waste. Discarded electronics equipment such as cell phones, PDAs, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs), LCD or plasma screens and monitors.

1.37 Exempt Waste. Biohazardous or Biomedical Waste (except Sharps), Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, and those wastes under the control of the Nuclear Regulatory Commission.

1.38 Food Waste. Food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, Stable Matter, and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard and food contaminated paper products.

1.39 Garbage. All non-recyclable packaging, and putrescible waste attributed to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is collected. Garbage does not include those items defined herein as Recyclable Materials, Organic Waste, Bulky Waste, E-Waste, U-Waste, or Exempt Waste.

1.40 Garbage Bin. A metal or plastic container, with a capacity of one (1) cubic yard up to, and including, six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type garbage truck that is approved for such purpose by the CITY. Garbage Bins may also include Compactors that are owned by the MFD or Commercial Service Unit wherein the MFD or Commercial Collection Service occurs.

1.41 Garbage Cart. A heavy plastic receptacle with wheels and a rated capacity of at least twenty (20) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting

lid and wheels, that is approved by the City Representative for use by Service Recipients for Collection Services under this Agreement.

1.42 Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits in the Organic Waste Cart utilized by the Service Recipient. Green Waste includes plant debris, such as Palm, Yucca and Cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, Holiday Trees, and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is collected. Green Waste does not include items herein defined as Exempt Waste.

1.43 Gross Receipts. All monetary amounts collected by the CONTRACTOR for the provision of Collection Services pursuant to this Agreement, (including revenue received by the CONTRACTOR from any entity, including Federal, State, County or other local facilities within the Service Area for the provision of Collection Services by the CONTRACTOR hereunder), calculated in accordance with Generally Accepted Accounting Procedures (GAAP). The term Gross Receipts, for purposes of this Agreement, does not include any revenues generated from the sale of Recyclable Material, or other receipts from state and local government accounts (e.g. grants, cash awards and rebates) resulting from the performance of this Agreement.

1.44 Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such as local, state or federal law or regulations may be amended from time to time.

1.45 Household Hazardous Waste (HHW). HHW includes dry cell household batteries, cell phones and PDAs; used motor oil; used oil filters when contained in a sealed plastic bag; cooking oil; compact fluorescent light bulbs contained in a sealed plastic bag; cleaning products, pesticides, herbicides, insecticides, painting supplies, automotive products, solvents, stripes, and adhesives, auto batteries; and Universal Waste.

1.46 Kitchen Food Waste Pail. A plastic receptacle with a rated capacity not exceeding one and one-half (1.5) gallons, having a hinged lid, suitable for use in a SFD or MFD Service Unit for temporary storage of SFD and MFD Organic Waste that is approved for such purpose by the CITY.

1.47 Large Items. Those materials including furniture, carpets, mattresses, White Goods, Brown Goods, E-Waste, clothing, tires without rims, Green Waste, and Large Green Waste which are attributed to the normal activities of a SFD Service Unit, MFD Service, or City Service Unit. Large Items must be generated by and at the Service Unit wherein the Large Items are collected. Large Items do not include items herein defined as Exempt Waste.

1.48 Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than six (6) feet in its longest dimension, and not weighing more than seventy (70) pounds, which are attributed to the normal activities of a SFD, MFD, or City Service Unit. Large Green Waste must be generated by and at the Service Unit wherein the Large Green Waste is collected.

1.49 Materials Recovery Facility (MRF). Any facility, selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

1.50 MFD Collection Service. MFD Garbage Collection Service, MFD Recycling Service, MFD Organic Collection Service, MFD Bulky Waste Collection Service, and MFD Debris Box Collection Service.

1.51 MFD Debris Box Waste Collection Service. The Collection of MFD Garbage, Recyclable Materials, Organic Waste, or Construction and Demolition Debris by the CONTRACTOR from MFD Service Units in the Service Area, and the delivery of Collected MFD Debris Boxes to an appropriate processing facility or disposal facility.

1.52 MFD Bulky Waste Collection Service. The periodic on-call Collection of a combination of Large Items Collected by the CONTRACTOR, from MFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recovery Facility, Organic Waste Processing Facility or such other facility as may be appropriate under the terms of this Agreement. MFD Bulky Waste Collection Service can include the Collection of Large Items through the use of Debris Boxes.

1.53 MFD Organic Waste. Green Waste and Food Waste separated at the source of generation for inclusion in the MFD Organic Waste Collection Service program.

1.54 MFD Organic Waste Collection Service. The Collection of MFD Organic Waste by the CONTRACTOR from MFD Service Units in the Service Area, and the delivery of that MFD Organic Waste to an Organic Waste processing facility.

1.55 MFD Recycling Service. The Collection of Recyclable Materials, by the CONTRACTOR, from MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility and the processing and marketing of those Recyclable Materials.

1.56 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing a common Garbage Bin for the accumulation and set-out of Garbage.

1.57 MFD Garbage Collection Service. The Collection of Garbage, by the CONTRACTOR, from MFD Service Units in the Service Area and the delivery of that Garbage to the Disposal Facility.

1.58 Non-Collection Notice. A form developed and used by the CONTRACTOR, as approved by the CITY, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

1.59 Organic Waste. Includes Food Waste and Green Waste.

1.60 Organic Waste Bin. A metal or plastic container, with a capacity of one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY.

1.61 Organic Waste Cart. A heavy plastic receptacle with wheels and a rated capacity not exceeding ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels, that is approved for such purpose by the CITY.

1.62 Organic Waste Processing Facility. Any facility selected by the CONTRACTOR that is designed, approved by the CITY, or specifically designated by the CITY, operated and legally permitted for the purpose of receiving and processing Organic Waste and Large Green Waste.

1.63 Recyclable Materials. Those materials which are capable of being recycled and which would otherwise be processed or disposed of as Garbage. Recyclable Materials include

those materials defined by the CITY, including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (up to 20 pounds); steel including "tin" cans, empty aerosol cans (empty, non-toxic products) and small scrap (up to 20 pounds); bimetal containers; plastic bags, plastic food containers, #1-7 plastics regardless of form or mold (including but not limited to plastic containers, bottles, wide mouth tubs, plastic bags, film plastic, and polystyrene), aluminum foil and pans.

1.64 Recyclables Tote-Bag. A collapsible bag distributed to all MFD customers for their use in transporting recyclable materials to the collection point that is approved for such purpose by the CITY and is appropriately labeled as a Recyclables Tote-Bag.

1.65 Recycling Bin. A plastic or metal container, with a capacity of one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type recycling truck that is approved for such purpose by the CITY and is appropriately labeled as a Recycling Bin.

1.66 Recycling Cart. A heavy plastic receptacle with wheels and a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels that is approved for such purpose by the CITY and is appropriately labeled as a Recycling Cart.

1.67 Service Area. That area within the corporate limits of the City of _____, California.

1.68 Service Recipient. An individual or company receiving Collection Service.

1.69 Service Unit. SFD Service Units, MFD Service Units, City Service Units, and Commercial Service Units.

1.70 SFD Collection Service. SFD Garbage Collection Service, SFD Recycling Collection Service, SFD Organic Waste Collection Service, SFD Bulky Waste Collection Service, and SFD Debris Box Collection Service.

1.71 SFD Debris Box Waste Collection Service. The Collection of SFD Garbage, Recyclable Materials, Organic Waste, or Construction and Demolition Debris by the CONTRACTOR from SFD Service Units in the Service Area, and the delivery of Collected SFD Debris Boxes to an appropriate processing facility or disposal facility.

1.72 SFD Bulky Waste Collection Service. The periodic on-call Collection of a combination of loose Large Items not exceeding an approximately equivalent of four (4) cubic yards and three (3) individual Large Items, such as a TV, couch, or water heater, Collected by the CONTRACTOR, from SFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recovery Facility, Organic Waste Processing Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Bulky Waste Collection Service does not include the collection of Large Items through the use of Debris Box Containers.

1.73 SFD Organic Waste. Green Waste and Food Waste separated at the source of generation for inclusion in the SFD Organic Waste Collection Service program.

1.74 SFD Organic Waste Collection Service. The Collection of Residential Organic Waste by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of that Residential Organic Waste to an Organic Waste Processing Facility.

1.75 SFD Recycling Collection Service. The Collection of Recyclable Materials by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility and the processing and marketing of those Recyclable Materials.

1.76 SFD Garbage Collection Service. The Collection of Garbage, by the CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Garbage to a Disposal Facility.

1.77 SFD Service Unit. Any Dwelling Unit in the Service Area utilizing a Garbage Cart, or any combination of Dwelling Units sharing Garbage Carts, for the accumulation and set out of Garbage.

1.78 Sharps. Sharps includes needles, scalpels, blades, broken medical glass, broken capillary tubes, and ends of dental wires.

1.79 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.80 Stable Matter. Manure and other waste matter normally accumulated and associated with stables or in domestic livestock.

1.81 Universal Waste. Televisions, computer monitors, consumer electronics with circuit boards, fluorescent lamps, cathode ray tubes, non-empty aerosol cans, instruments and switches that contain mercury, and dry cell batteries containing cadmium copper, or mercury.

1.82 White Goods. Discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.83 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in Article 3.09 of this Agreement.

ARTICLE 2. Term of Agreement

2.01 Term. The term of this Agreement shall be for a ten (10) year period beginning July 1, 20xx and terminating on June 30, 20xx. The CITY shall have an option to extend the Agreement for up to two (2) additional three (3) year periods provided the following conditions have been met.

2.01.1 First Extension. On or about July 1, 20xx, provided the CITY determines that the CONTRACTOR has not failed to meet the minimum diversion requirements set forth in Article 5 for two (2) consecutive years and has met the service requirements in this Agreement, the CITY may offer the CONTRACTOR in writing a three (3) year extension of this Agreement. CONTRACTOR shall provide written notice to the CITY as to whether CONTRACTOR accepts or rejects the CITY's offer within twenty (20) Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the CITY within twenty (20) Work Days, the CITY's offer shall be deemed withdrawn and the CITY shall have no obligation to extend the term of this Agreement beyond June 30, 20xx. If the term of this Agreement is extended, the compensation provisions of Article 4 shall not be subject to negotiation. However, the compensation payable to CONTRACTOR shall be adjusted annually throughout the extended term as provided in Article 4.

2.01.2 Section Extension. On or about July 1, 20xx, provided the CITY determines that the CONTRACTOR has not failed to meet the minimum diversion requirements set forth in Article 5 for two (2) consecutive years and has met the service requirements in this Agreement, the CITY may offer the CONTRACTOR in writing a three (3) year extension of this Agreement. CONTRACTOR shall provide written notice to the CITY as to whether CONTRACTOR accepts or rejects the CITY's offer within twenty (20) Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the CITY within twenty (20) Work Days, the CITY's offer shall be deemed withdrawn and the CITY shall have no obligation to extend the term of this Agreement beyond June 30, 20xx. If the term of this Agreement is extended, the compensation provisions of Article 4 shall not be subject to negotiation. However, the compensation payable to CONTRACTOR shall be adjusted annually throughout the extended term as provided in Article 4.

ARTICLE 3. Services Provided by the Contractor

3.01 Grant of Exclusive Agreement. Except as otherwise provided in this Agreement, the CONTRACTOR is herein granted an exclusive Agreement to provide Collection Services within the Service Area. No other garbage, organic waste, or recycling services shall be exclusive to the CONTRACTOR.

3.02 Limitations to Scope of Exclusive Agreement.

3.02.1 Recyclable Materials or Large Items that are source separated from Garbage by a Service Recipient, for which the waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator;

3.02.2 Garbage, Recyclable Materials, Large Items or Organic Waste, which is removed from any SFD Service Unit, MFD Service Unit, Commercial Service Unit, or City Service Unit and which is transported personally by the owner or occupant of such premises (or by his or her full-time employees but not including construction related employees or subcontractors) to a processing or Disposal Facility;

3.02.3 Recyclable Materials, Organic Waste or Large Items which are source separated at any premises by the waste generator and donated to youth, civic or charitable organizations;

3.02.4 Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq.;

3.02.5 Organic Waste removed from a premises by a gardening, landscaping, or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service;

3.02.6 Construction and Demolition Debris where the Service Recipient holds a building permit, and such construction project was done by the Service Recipient or, done as part of a total service offered by a licensed company or by the CITY, and where the licensed company uses its own equipment and employees, and no Debris Box Containers are used for the collection and transportation of such Construction and Demolition Debris;

3.02.7 Large Items removed from a premises by a property management or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;

3.02.8 Hazardous Waste regardless of its source; and

3.02.9 Garbage, Organic Waste, or Recyclables Materials that are removed from a premise by a company through the performance of a service that the CONTRACTOR has elected not to provide.

3.03 CONTRACTOR acknowledges and agrees that the CITY may permit other persons besides the CONTRACTOR to collect any and all types of materials excluded from the scope of this Agreement, as set forth above, without seeking or obtaining approval of CONTRACTOR. If CONTRACTOR can produce evidence that other persons are servicing collection containers or are Collecting Garbage, Recyclable Materials, Large Items, Construction and Demolition Debris, and/or Organic Waste in a manner that is not consistent with the CITY'S Municipal Code or this Agreement, it shall report the location, the name and phone number of the person or company to the CITY along with CONTRACTOR'S evidence of the violation of the exclusiveness of this Agreement, and the CONTRACTOR shall assist the CITY to enforce the CITY's Municipal Code and this Agreement.

3.03.1 The scope of this Agreement shall be interpreted to be consistent with applicable law, now and during the term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the CITY to lawfully provide for the scope of services as specifically set forth herein, CONTRACTOR agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the CITY shall not be responsible for any lost profits or losses claimed by CONTRACTOR to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of CONTRACTOR to minimize the financial impact of such future judicial interpretations or new laws.

3.04 Service Standards. CONTRACTOR shall perform all Collection Services under this Agreement in a thorough and professional manner. Collection Services described in this Agreement shall be performed regardless of weather conditions or difficulty of collection.

3.05 Hours and Days of Collection.

3.05.1 SFD and MFD Collection Services shall be provided, commencing no earlier than 7:00 a.m. and terminating no later than 5:00 p.m., in accordance with the Municipal Code, Monday through Friday with no service on Saturday (except for holiday service as set forth in Article 3.09 of this Agreement in which case normal collection hours may be utilized) or Sunday. The hours, days, or both of collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

3.05.2 Commercial Collection Service shall be provided, commencing no earlier than 7:00 a.m., and terminating no later than 5:00 p.m., Monday through Saturday, with no service on Sunday. The hours, days, or both of collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

3.05.3 City Collection Service shall be provided, commencing no earlier than 7:00 a.m., and terminating no later than 5:00 p.m., Monday through Sunday. The hours, days, or both of collection may be extended with the prior written consent of the City Representative.

3.05.4 The CITY may direct CONTRACTOR to restrict the Collection hours in areas around schools and in high traffic areas during peak commute hours. When the CITY is conducting road overlay or slurry projects, the CITY reserves the right to temporarily redirect or restrict CONTRACTOR from collection in the affected areas or temporarily change the collection hours if needed. The hours of collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

3.06 Manner of Collection. The CONTRACTOR shall provide Collection Service with as little disturbance as possible and shall leave any Cart or Bin in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

3.07 Containers.

3.07.1 Carts, Kitchen Food Waste Pails, and Recyclables Tote Bags. Carts, Bins, Kitchen Food Waste Pails, and Recyclables Tote Bags are to be new at the start of the Agreement. Carts are to be hot-stamped, embossed, or laminated, with a unique identification number, and in-molded with the type of materials to be Collected (i.e., Garbage, Organic Waste, Recyclable Materials) and instructions for proper usage. In-molding on the Carts shall be on the lids. CONTRACTOR'S name shall not be included on the body of Carts. Kitchen Food Waste Pails are to be hot stamped, embossed, laminated, or in-molded with instructions for proper use. CONTRACTOR shall also provide new Recyclables Tote-Bags to be made available to individual MFD Service Recipients at no charge to the MFD Service Recipient. The type and size of the MFD Tote-Bags shall be approved by the CITY. Labeling and graphics of the Carts, Kitchen Food Waste Pails, and MFD Tote bags shall be approved by the CITY.

3.07.2 Bins. Bins are to be new at the start of the Agreement. Bins are to be painted, embossed, or hot stamped with a unique identification number, and be labeled with the type of materials to be Collected (i.e., Garbage, Organic Waste, Recyclable Materials) and instructions for proper usage. Labeling and graphics of the Bins shall be approved by the CITY.

3.07.3 Debris Boxes. Debris Box-Containers may be used, provided they are newly painted, properly marketed and in good working order. The CITY retains the right to inspect any such used Debris Box and direct the CONTRACTOR to replace such a used Debris Box if it is deemed to be not acceptable.

3.07.4 Purchase and Distribution of Carts, Bins, Kitchen Food Waste Pails, and Recyclables Tote-Bags. The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional carts, bins, Kitchen Food Waste Pails, and Recyclables Tote-Bags to Service Units in the Service Area. CONTRACTOR shall also distribute carts, bins, Kitchen Food Waste Pails, and Recyclables Tote-Bags to new Service Units that are added to CONTRACTOR'S Service Area during the term of this Agreement. The distribution shall be completed within three (3) Work Days of receipt of notification from the CITY or the Service Unit.

3.07.5 Replacement of Carts and Bins. CONTRACTOR'S employees shall take care to prevent damage to carts or bins by unnecessary rough treatment. However, any Cart or Bin damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the CONTRACTOR'S expense, within three (3) Work Days at no cost or inconvenience to the Service Recipient.

3.07.5.1 Upon notification to the CONTRACTOR by the CITY or a Service Recipient that the Service Recipient's Cart(s), Bin(s), Kitchen Food Waste Pail(s) or Recyclables Tote-Bag(s) have been stolen or damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall deliver a replacement Cart(s), Bin(s) Kitchen Food Waste Pail(s), or Recyclables Tote-Bag(s) to such Service Recipient within three (3) Work Days. The CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis.

3.07.5.2 Where such Cart or Kitchen Food Waste Pail is lost, stolen or damaged beyond repair through no fault of the CONTRACTOR, each SFD Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Garbage Cart, one (1) lost,

destroyed, or stolen Recycling Cart, one (1) lost, destroyed, or stolen Organic Waste Cart, and three (3) lost, destroyed, or stolen Kitchen Food Waste Pails, during the life of this Agreement at no cost to the Service Recipient.

3.07.5.3 Where such Cart, Bin, Kitchen Food Waste Pail, or Recyclables Tote Bag is lost, stolen or damaged beyond repair through no fault of the CONTRACTOR, each MFD Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Garbage Cart or Bin, one (1) lost, destroyed, or stolen Recycling Cart or Bin, (1) lost, destroyed, or stolen Organic Waste Cart or Bin and three (3) lost, destroyed, or stolen Kitchen Food Waste Pails, and three (3) lost, destroyed, or stolen Recyclables Tote-Bags during the life of this Agreement at no cost to the Service Unit.

3.07.5.4 Where such Cart or Bin is lost, stolen or damaged beyond repair through no fault of the CONTRACTOR, each Commercial and City Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Garbage Cart or Bin, one (1) lost, destroyed, or stolen Recycling Cart or Bin, and (1) lost, destroyed, or stolen Organic Waste Cart or Bin during the life of this Agreement at no cost to the Service Unit.

3.07.5.5 Where such Bin or Cart replacement occurs through no fault of the CONTRACTOR, CONTRACTOR shall be compensated for the cost of those replacements in excess of the requirements set forth above in accordance with the "Cart or Bin Exchange" Service Rate, as appropriate, as initially set by the CITY or as may be adjusted by the CITY as provided under the terms of this Agreement.

3.07.6 Repair of Carts and Bins. CONTRACTOR shall be responsible for repair of carts in the areas to include but not be limited to, hinged lids, wheels and axles. Within three (3) Work Days of notification by the CITY or a Service Recipient of the need for such repairs, the CONTRACTOR shall repair the Cart or Bin or if necessary, remove the Cart or Bin for repairs and deliver a replacement Cart or Bin to the Service Recipient.

3.07.7 Cart or Bin Exchange. Upon notification to the CONTRACTOR by the CITY or a Service Recipient that a change in the size or number of carts or Bins is required, the CONTRACTOR shall deliver such carts or Bins to such Service Recipient within seven calendar days to allow for the exchange to occur on the regular scheduled collection day. Each SFD Service Unit shall be entitled to receive one (1) free Garbage Cart exchange, and unlimited exchanges of Recycling or Organic Waste Carts per Agreement Year during the term of this Agreement. Each MFD, Commercial and City Service Unit shall be entitled to receive one (1) free Garbage Cart or Bin exchange, and unlimited exchanges of Recycling or Organic Waste Carts or Bins per Agreement Year during the term of this Agreement. Accordingly CONTRACTOR shall be compensated for the cost of those exchanges in excess of one (1) per Agreement Year, in accordance with the "Cart or Bin Exchange" service rate as Set forth in Exhibit 1 which is attached to and included in this Agreement or as may be adjusted under the terms of this Agreement.

3.07.8 Ownership of Carts. Ownership of carts shall rest with the CONTRACTOR, except in the case of the termination of the Agreement prior to the expiration of the initial term or optional extension terms due to the default of the CONTRACTOR as set forth in Article 24 of this Agreement shall rest with the CITY, or except that ownership of carts in the possession of a Service Recipient at the end of this Agreement shall rest with the CITY. At its sole discretion, CITY may elect not to exercise its rights with regards to this Article and in such case the carts shall remain the property of the CONTRACTOR upon termination of this Agreement. In this event, CONTRACTOR shall be responsible for removing all carts in service from the Service Area and reusing or recycling such carts.

3.07.9 Ownership of Bins. Ownership of Bins distributed by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination of the Agreement prior to the expiration of the initial term or optional extension term due to the default of the CONTRACTOR as set forth in Article 24 of this Agreement. Under such circumstances, the CITY shall have the right to take possession of the Bins and shall retain such possession until satisfactory arrangements can be made to provide Collection Services using other equipment. Such time of possession shall not be limited and regardless of the time of possession there shall be no monies owing to the CONTRACTOR from the CITY for the use of the equipment. Upon the receipt of written notice from the CITY, CONTRACTOR shall submit to the City Representative an inventory of Bins, including their locations.

3.07.10 Ownership of Debris Box Containers. Ownership of Debris Box Containers distributed by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination of the Agreement prior to the expiration of the initial term or optional extension terms due to the default of the CONTRACTOR as set forth in Article 24 of this Agreement. Under such circumstances, the CITY shall have the right to take possession of the containers and shall retain such possession until satisfactory arrangements can be made to provide Collection Services using other equipment. Such time of possession shall not be limited and regardless of the time of possession there shall be no monies owing to the CONTRACTOR from the CITY for the use of the equipment. Upon the receipt of written notice from the CITY, CONTRACTOR shall submit to the City Representative an inventory of containers, including their locations.

3.07.11 Annual Inspection and Cleaning of Bins and Debris Boxes. Once each Agreement Year, at no charge to the CITY or the Service Recipient, CONTRACTOR shall inspect all Garbage, Recycling, and Organic Waste Bins and Debris Box Containers at the Service Unit's premises and shall replace those Bins or containers needing cleaning with clean Bins or containers and remove the dirty Bins or containers for cleaning.

3.08 Labor and Equipment. CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by CITY or by any Service Recipient except as expressly provided by this Agreement.

3.09 Holiday Service. The CITY observes January 1st, Thanksgiving Day, and December 25th as legal holidays. CONTRACTOR shall not provide Collection Services on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Collection Services being performed on Saturday. MFD, Commercial and City Collection Services shall be adjusted as agreed between the CONTRACTOR and the Service Recipient but must meet the minimum frequency requirement of one (1) time per week.

3.10 Processing and Disposal.

3.10.1 Compliance with Regulations. All materials Collected under this Agreement shall be delivered to facilities that comply with the Department of Resources Recycling and Recovery regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). CONTRACTOR, and not the CITY, must assure that all Disposal, transfer, and processing facilities are properly permitted to receive material Collected under this Agreement. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

3.10.2 Permits and Approvals. CONTRACTOR must assure that all facilities selected by CONTRACTOR shall possess all existing permits and approvals by local enforcement agencies to be in full compliance with all regulatory agencies to conduct all operations at the approved location. CONTRACTOR shall, upon written request from the CITY, arrange for the facilities selected by the CONTRACTOR to provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information shall result in the levy of liquidated damages as specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

3.10.3 Disposal Facility. Beginning on July 1, 20xx, except as set forth below, all Garbage collected as a result of performing Collection Services shall be transported to, and delivered on the same day as collection, at the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, the CONTRACTOR shall transport and dispose of the Garbage at such other legally permitted disposal facility as is approved by CITY. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

3.10.4 Organic Waste Processing Facility. Beginning on July 1, 20xx, CONTRACTOR shall deliver on the same day as collection all collected Organic Waste to a fully permitted Organic Waste Processing Facility as designated by CONTRACTOR and approved by the CITY. In the event the facility is closed on a Work Day, the CONTRACTOR shall transport and deliver the Organic Waste to such other legally permitted facility as is approved by the CITY. CONTRACTOR shall ensure that all Organic Waste collected pursuant to this Agreement, except residue resulting from processing, is delivered to the approved Organic Waste Processing Facility in accordance with AB 939 and subsequent legislation and regulations. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

3.10.5 Material Recovery Facility. Beginning on July 1, 20xx, all Recyclable Materials Collected as a result of performing SFD, MFD, Commercial and City Recycling Services shall be delivered to the Material Recovery Facility (MRF). In the event the MRF is closed on a Work Day, the CONTRACTOR shall transport and deliver the Recyclable Material to such other legally permitted MRF as is approved by CITY. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

3.11 Inspections. The CITY shall have the right to inspect the CONTRACTOR'S facilities or collection vehicles and their contents at any time while operating inside or outside the CITY.

3.12 Commingling of Materials.

3.12.1 Garbage and Recyclable Material. CONTRACTOR shall not at any time commingle Garbage, or Organic Waste, Collected pursuant to this Agreement, with any Recyclable Material separated for collection pursuant to this Agreement without the express prior written authorization of the City Representative.

3.12.2 Garbage Collected in _____. CONTRACTOR shall not at any time commingle any Garbage Collected pursuant to this Agreement, with any other material Collected by CONTRACTOR inside or outside the CITY without the express prior written authorization of the City Representative.

3.12.3 Recyclable Materials. CONTRACTOR shall not at any time commingle Recyclable Materials Collected pursuant to this Agreement, with any other material Collected by CONTRACTOR inside or outside the CITY without the express prior written authorization of the City Representative.

3.13 Spillage and Litter. The CONTRACTOR shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the CONTRACTOR'S vehicle. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Garbage, Organic Waste, or Recyclable Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

3.13.1 The CONTRACTOR shall not be responsible for cleaning up unsanitary conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR shall clean up any material or residue that are spilled or scattered by the CONTRACTOR or its employees.

3.13.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, CONTRACTOR'S vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.13.3 The above paragraphs notwithstanding, CONTRACTOR shall clean up any spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY.

3.13.4 In the event where damage to CITY streets is caused by a hydraulic oil spill, CONTRACTOR shall be responsible for all repairs to return the street to the same condition prior to the spill. CONTRACTOR shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and at no cost to the CITY.

3.13.5 Ownership of Materials. Title to Garbage, Organic Waste, and Recyclable Materials shall pass to CONTRACTOR at such time as said materials are placed in the CONTRACTOR'S collection vehicles.

3.13.6 Hazardous Waste. Under no circumstances shall CONTRACTOR'S employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a collection container. If CONTRACTOR determines that material placed in any container for collection is Hazardous Waste, or other material that may not legally

be accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to CONTRACTOR'S employees, the CONTRACTOR shall have the right to refuse to accept such material. The generator shall be contacted by the CONTRACTOR and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the CONTRACTOR shall, before leaving the premises, leave a Non-collection Notice, which indicates the reason for refusing to collect the material, and how the Hazardous Waste can be properly disposed or recycled.

3.13.7 If Hazardous Waste is found in a collection container that poses an imminent danger to people or property, the CONTRACTOR shall immediately notify the City of Public Safety (Police) Department. The CONTRACTOR shall immediately notify the CITY of any Hazardous Waste that has been identified.

3.13.8 If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or one of the processing facilities and the generator cannot be identified, CONTRACTOR shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

3.14 Regulations and Record Keeping. CONTRACTOR shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at the CONTRACTOR'S facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

3.15 Transition. CONTRACTOR understands and agrees that the time between the formal Agreement signing and July 1, 20xx is intended to provide the CONTRACTOR with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish/build facilities, and begin the public awareness campaign as part of the CONTRACTOR'S transition program as specified in **Exhibit 6** which is attached to and included in this Agreement. CONTRACTOR shall be responsible for the provision of all Collection Services beginning July 1, 20xx.

ARTICLE 4. Charges and Rates

4.01 CONTRACTOR Billing. The CONTRACTOR shall be responsible for the billing and collection of payments for all Collection Services. The CONTRACTOR shall charge Service Recipients an amount not to exceed the Maximum Service Rates set by CITY resolution and attached in Exhibit 1 to this Agreement and as may be adjusted under the terms of this Agreement. The CITY shall approve the format for all customer bills.

4.01.1 Partial Month Service. If, during a month, a Service Unit is added to or deleted from CONTRACTOR'S Service Area, the CONTRACTOR'S billing shall be pro-rated based on the weekly service rate (the weekly service rate shall be the service rate established in Exhibit 1 divided by four (4) times the number of actual weeks in the month that service was provided to the Service Unit.

4.01.2 Production of Invoices for Service Units Utilizing Carts. The CONTRACTOR shall produce an invoice, in a form and format that is approved by the City Representative, for Service Recipients utilizing carts received under this Agreement in advance, but no less than four (4) times per year. The CONTRACTOR'S invoice shall be remitted to the Service Recipient no earlier than the twentieth (20th) day of the 1st month of the period for which service is being billed. Notwithstanding City's Notice and Rate Hearing, notification of future rate increases shall be included in at least one invoice prior to the affected rate increase date.

4.01.3 Production of Invoices for Service Units Utilizing Bins. The CONTRACTOR shall produce an invoice, in a form and format that is approved by the City Representative, for Service Recipients utilizing Bins received under this Agreement in advance but no less than twelve (12) times per year. The CONTRACTOR may invoice the Service Recipient no less than ten (10) days preceding the month for services for which service is being billed.

4.01.4 Production of Invoices for Debris Box Collection Service. The CONTRACTOR shall produce an invoice, in a form and format that is approved by the City Representative, for Debris Box Collection Services received under this Agreement in arrears for services during the prior month. Customers utilizing Debris Box Collection Services may be invoiced upon completion.

4.01.5 City Provided Billing Inserts. CITY may provide educational and other material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and commercial Customers for Collection Services. CONTRACTOR shall not charge the CITY for the inclusion of additional educational or other materials in the invoices.

4.01.6 Methods of Payment. CONTRACTOR shall provide the means for customers to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be password protected and comply with federal regulations protecting the privacy of customer credit information. CONTRACTOR shall provide evidence of such security certifications and advise the CITY of CONTRACTOR'S security measures implemented for on-line payment.

4.01.7 Delinquent Service Accounts. The CONTRACTOR may report to the City Representative, on a monthly basis, a SFD Service Recipient who has received Collection Service and whose account is over ninety (90) days past due, and a MFD or a Commercial Service Recipient whose account is over forty-five (45) days past due. The CONTRACTOR may take such action as is legally available to collect or cause collection of such past due amounts, including removing Recycling Carts and Bins and Organic Waste Carts and Bins, and reducing the provision of Garbage Collection Services to the smallest Cart or Bin size to any Service Unit due to non-payment. CONTRACTOR may not discontinue providing Garbage Collection Services.

4.01.7.1 CITY ordinance allows a lien process for non-payment of bills by customers. Under no circumstances shall CITY shall have any responsibility for collecting monies owed to CONTRACTOR from delinquent service accounts.

4.01.8 Financial Information. On or before April 1, 20xx, and annually thereafter during the term of this Agreement, CONTRACTOR shall make available to CITY audited copies of the financial information required under Article 16.01.1 for the specific services performed under this Agreement for the preceding Agreement Year. If CONTRACTOR fails to make available the financial information by April 1st, it is agreed that CONTRACTOR shall be deemed to have waived the Refuse Rate Index (RRI) rate adjustment for that year.

4.01.8.1 Where the financial information made available by the CONTRACTOR is marked "Confidential", the CITY will take reasonable measures, subject to the requirements of applicable law, to prevent the dissemination of the financial information to third parties, and will promptly notify CONTRACTOR upon receipt of a request by a third party under the Public Records Act to review or obtain such financial information.

4.01.8.2 If CONTRACTOR'S failure to make available the financial information required under Article 4.01.8 is the result of extraordinary or unusual circumstances

as demonstrated by CONTRACTOR to the satisfaction of the CITY, the CITY, at its sole discretion, may consider the request for the RRI rate adjustment.

4.02 Adjustments to Maximum Collection Service Rates. Collection Service Rates shall consist of some combination of the following elements: a *Collection Element*, a *Disposal Element*, a *Franchise Fee Element*, and such other elements as may be added by the CITY during the term of this Agreement.

4.02.1 Adjustments to Collection Elements Using the RRI. CONTRACTOR'S Maximum Service Rates are as specified in Exhibit 1 of this Agreement, and are firm and fixed through June 30, 20xx. CONTRACTOR shall not be entitled to any compensation that is not listed in Exhibit 1. On or after July 1, 20xx, and each subsequent July 1st, CONTRACTOR'S Maximum Service Rates shall be adjusted as follows:

4.02.1.1 SFD Collection Service. Lines A4, B4, C2, C3, C3, C4, C5, and C6 in Exhibit 1a.

4.02.1.2 MFD Collection Service. All Collection Component lines of the *Collection Elements*, the Push Rates, and the Container Handling Fees in Exhibit 1b.

4.02.1.3 Commercial Collection Service. All Collection Component lines of the *Collection Elements*, the Push Rates, and the Container Handling Fees in Exhibit 1c.

4.02.1.4 Emergency Service Rates - Employees. All hourly rates in Exhibit 1d.

4.02.1.5 Emergency Service Rates - Equipment. All hourly rates in Exhibit 1e.

4.02.1.6 RRI Adjustment. Beginning on July 1, 20xx, and annually thereafter during the term of this Agreement, the *Collection Elements* of the maximum service rates set forth in Article 4.03.1 above shall be adjusted by the RRI adjustment set forth below. In any year that the calculation of the RRI results in a negative number, there shall be no adjustment of the *Collection Elements*. Instead the negative RRI number shall be added to the result of the subsequent years RRI calculation and the result shall be the RRI adjustment for that subsequent year.

4.02.2 The RRI adjustment shall be the sum of the weighted percentage change in the Annual Average of each RRI index number between the base fiscal year, which shall be the prior preceding calendar year ending December 31st and the preceding fiscal year ending December 31st as contained in the most recent release of the source documents listed in Exhibit 2, ("REFUSE RATE INDEX") which is attached to and included in this Agreement. Therefore, the first *Collection Element* rate adjustment will be based on the percentage changes between the Annual Average of the RRI indices for the calendar year ended December 31, 20xx and the Annual Average of the RRI indices for the calendar year ended December 31, 20xx. The RRI shall be calculated using the RRI methodology included in Exhibit 2.

4.02.2.1 Rounding. Annual adjustments shall be made only in units of one cent (\$0.01) and shall not result in a decrease to the rates currently in effect. Fractions of less than one cent (\$0.01) shall not be considered in making adjustments. The indices shall be truncated at four (4) decimal places for the adjustment calculations.

4.02.3 Adjustments to Disposal Elements. Beginning on July 1, 20xx and annually thereafter, adjustments to *Disposal Elements*, shall, subject to compliance with all

provisions of this Article, receive an annual adjustment in the *Disposal Elements* of the maximum service rates as set forth in Exhibit 1 to this Agreement:

4.02.4 SFD Collection Service. The maximum SFD Garbage Collection Service "Monthly Unit Disposal Rate" is based on the tipping fee per ton and the "Monthly Unit SFD Garbage Generation Factor" set forth in Exhibit 1. The SFD Large Item Waste Collection Service "Monthly Unit Disposal Rate" is based on the tipping fee per ton and the "Monthly Unit Large Item Generation Factor" set forth in Exhibit 1.

4.02.4.1 Tip Fee Changes. Any approved change in the per ton tipping fees, as set forth below, will result in a corresponding change in the appropriate "Monthly Unit Disposal Rate" based on the following formula:

((The new tipping fee x the "Monthly Unit SFD Garbage Generation Factor", or "Monthly Unit SFD Large Item Generation Factor" as appropriate) / one hundred percent (100%) minus the franchise fee percentage, (such amount at the inception of this Agreement to be ninety percent (90%)), to account for the change in the franchise fee applied to the disposal rate element.

Will equal: the SFD Garbage Collection Service, or SFD Large Item Collection Service "Monthly Unit Disposal Rate", as appropriate.

4.02.5 MFD Collection Service. The maximum MFD Garbage Collection Service "Disposal Element Rate" is based on the tipping fee per ton, the size of the Bin, the frequency of Collection and the "Cubic Yard Conversion Factor" set forth in Exhibit 1. Any approved change in the per ton tipping fees, as set forth below, will result in a corresponding change in the "Disposal Rate" based on the following formula:

((The appropriate "Cubic Yard Conversion Factor"/2,000 pounds) x the new tipping fee x the Bin size x the frequency of Collection) / one hundred percent (100%) minus the franchise fee percentage, (such amount at the inception of this Agreement to be ninety percent (90%)), to account for the franchise fee applied to the disposal rate element.

Will equal: the MFD Garbage Collection Service "*Disposal Element Rate*" for that specific Bin size and Collection frequency.

4.02.5.1 The MFD additional Large Item Collection Service "Disposal Element Rate" is based on the cost paid by the CONTRACTOR at the Disposal or processing facility.

4.02.6 Commercial Collection Service. The maximum Commercial Garbage Collection Service "Disposal Element Rate" is based on the tipping fee per ton and the appropriate Conversion Factor set forth on in Exhibit 1. Any approved change in the per ton tipping fees will result in a corresponding change in the "Disposal Element Rate" for Commercial Collection Services as set forth on Exhibit 1, based on the following formulas:

4.02.6.1 Commercial Bin Rates

((The appropriate "Conversion Factor"/2,000 pounds) x the new tipping fee x the Bin size x the frequency of Collection) / one hundred percent (100%) minus the franchise fee percentage, (such amount at the inception of this Agreement to be ninety percent (90%)), to account for the franchise fee applied to the disposal rate element.

Will equal: the Commercial Garbage Bin Collection Service "*Disposal Element Rate*" for the appropriate Bin size and Collection frequency.

4.02.6.2 Commercial Cart Rates

((The appropriate Cart "Conversion Factor"/2,000 pounds) x the new tipping fee) / one hundred percent (100%) minus the franchise fee percentage, (such amount at the inception of this Agreement to be ninety percent (90%)), to account for the franchise fee applied to the disposal rate element.

Will equal: The new Commercial Garbage Cart Collection Service "*Disposal Element Rate*" for the appropriate Collection frequency.

4.02.7 Adjustments to Generation Factors. In the event of a change in law or garbage, organic waste, or recycling program that has the potential to materially affect the "Monthly Unit Generation Factors" the "Cubic Yard Conversion Factors", or the "Cart Service Conversion Factors" as set forth by the CONTRACTOR in Exhibit 1, the CITY and the CONTRACTOR agree that a generation study will be performed at the request of the CITY with the cooperation of the CONTRACTOR. The study will be funded equally by the CITY and the CONTRACTOR. The generation study will be designed to establish an updated "Monthly Unit SFD Garbage Generation Factor", "Monthly Unit Large Item Generation Factor", "Cubic Yard Conversion Factors", or "Cart Service Conversion Factors". The CONTRACTOR shall cooperate fully with the CITY related to the performance and completion of the generation study.

4.02.8 CITY Approval of Maximum Service Rates. As of May 1, 20xx, and annually thereafter during the term of this Agreement, the CITY Representative shall notify CONTRACTOR of the adjustments to the affected Maximum Service rates to take place on the subsequent July 1st. CITY shall take action on the any changes in the Maximum Service Rates in accordance with the CITY'S municipal code.

4.03 CONTRACTOR'S Payments to CITY. CONTRACTOR shall make payment to the CITY of a franchise fee, and such other fees as may be specified in this Article 4.03. Payment to the CITY shall be due, on the fifteenth (15th) day of the month following the month the revenues are collected. Each such payment shall be accompanied by an accounting, which sets forth CONTRACTOR'S Gross Receipts collected during the preceding month in sufficient detail to allow for an independent recalculation of payments.

4.03.1 Franchise Fee. The franchise fee shall be a percentage of CONTRACTOR'S Gross Receipts collected each month under the terms of this Agreement. The franchise fee percentage shall be _____ percent (0.00%) unless otherwise adjusted by the CITY. In the event that the CITY adjusts the franchise fee percentage, the maximum service rates will also be adjusted to incorporate any such changes in the franchise fee percentage.

4.03.2 Solid Waste Fund Administrative Fee. The CONTRACTOR shall pay a Solid Waste Fund Administrative Fee to support the CITY'S Solid Waste Management program administration and general overhead. The CONTRACTOR shall pay _____ () divided into twelve (12) equal monthly payments of _____ (). Payment to the CITY shall be due on the fifteenth (15th) day of the month beginning on August 15, 20xx and monthly thereafter. These fees will be adjusted by the same RRI percentage change to any adjustments to the Maximum Service Rates.

4.03.3 Refuse Vehicle Street Maintenance Impact Fee. The CONTRACTOR shall pay a Refuse Vehicle Street Maintenance Impact Fee to recover street maintenance costs associated with solid waste, recycling and yard waste vehicles. The CONTRACTOR shall pay () divided into twelve (12) equal monthly payments of (). Payment to the CITY shall be due on the fifteenth (15th) day of the month beginning on August 15, 20xx and monthly thereafter. These fees will be adjusted by the same RRI percentage change to any adjustments to the Maximum Service Rates.

4.03.4 No acceptance by CITY of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against CONTRACTOR for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after the audit, such recompilation indicates an underpayment CONTRACTOR shall pay to CITY the amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after audit, such recompilation indicates an overpayment, CITY shall notify the CONTRACTOR in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recompilation. CONTRACTOR may offset the amounts next due following receipt of such notice by the amount specified therein.

4.03.5 Adjustments Due to Changes In Legislation. CONTRACTOR agrees that no extraordinary adjustment shall occur or rate adjustment be provided unless and only if changes to local, state, or federal regulations or laws occurring on or after March 31, 20xx result or will result in additional costs exceeding the RRI for the fee or additional service required under the legislative or regulatory change, or different services to be provided by CONTRACTOR which are not otherwise covered by the terms and conditions in Article 25 and have directly resulted or will result in changes to CONTRACTOR'S operations and have caused or will cause CONTRACTOR'S total operation costs to increase. The CITY may request from the CONTRACTOR such further information as it deems necessary to fully evaluate the CONTRACTOR'S request for extraordinary adjustment and make its determination. The CITY shall in the exercise of its reasonable discretion approve or deny the request, in whole or in part, within sixty (60) calendar days of receipt of the written request and all other additional information requested by the CITY. Any such change will be implemented within an agreed upon time between the CITY and CONTRACTOR.

ARTICLE 5. Diversion Requirements

5.01 Minimum Requirements. The CITY requires the CONTRACTOR to achieve a guaranteed diversion rate with a minimum diversion rate of 60 percent by December 31, 20xx; 70 percent by December 31, 20xx; and 80 percent by December 31, 20xx, and each successive calendar year or such other amount as may be set in accordance with the provisions of Article 25 of this Agreement. The diversion rate will be calculated as "the tons of materials Collected by CONTRACTOR from the provision of Collection Services that are sold or delivered to a Processing Facility, recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials Collected under this Agreement by CONTRACTOR in each Agreement Year.

5.02 Failure to Meet Minimum Requirements. CONTRACTOR'S failure to meet the minimum diversion guarantees set forth above in Article 5.01 may result in CONTRACTOR being in default of this Agreement as specified in Article 24, or the imposition of liquidated

damages as specified in Article 19, or denial of an extension to this Agreement as specified in Article 2. In determining whether or not to assess liquidated damages, hold the CONTRACTOR in default of this Agreement, or denial of a term extension, the CITY will consider the good faith efforts put forth by the CONTRACTOR in implementing the required programs to meet the minimum diversion requirements and the methods and level of effort of the CONTRACTOR to fully implement the work plans attached to and included in this Agreement as Exhibits 6 - 14.

ARTICLE 6. Service Units

6.01 Service Units. Service Units shall include all the following categories of premises which are in the Service Area as of July 1, 20xx, and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during term of this Agreement:

- 6.01.1 SFD Service Units
- 6.01.2 MFD Service Units
- 6.01.3 Commercial Service Units
- 6.01.4 City Service Units

6.01.4.1 Any question as to whether a premises falls within one of these categories shall be determined by the City Representative and the determination of the City Representative shall be final.

6.02 Service Unit Changes. The CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Collection Services.

6.02.1 Additions and Deletions. CONTRACTOR shall provide services described in this Agreement to new Service Units within five (5) Work Days of receipt of notice from CITY or new Service Unit to begin such service.

6.03 Coordination with Street Sweeping. THE CITY AND CONTRACTOR acknowledges that CONTRACTOR may have to modify collection days to accommodate the CITY's street sweeping schedule.

6.04 Route Map Update. CONTRACTOR shall revise the Service Unit route maps to show the addition of Service Units added due to annexation and/or addition of new service areas and shall provide such revised maps to the City Representative as requested.

ARTICLE 7. SFD Collection Services

7.01 SFD Collection Services. These services shall be governed by the following terms and conditions:

7.01.1 Conditions of Service. The CONTRACTOR shall provide SFD Collection Service to all SFD Service Units in the Service Area whose Garbage is properly containerized in Garbage Carts, Recyclable Materials are properly containerized in Recycling Carts, except as set forth in Article 7.05.4; and Organic Waste is properly containerized in Organic Waste Carts except as set forth in Article 7.09. The Garbage, Recycling and Organic Waste Carts will be Collected at least once a week. CONTRACTOR shall offer Garbage Carts in 20, 32, 64 and 96 gallon cart sizes, and Recyclables Materials and Organic Waste Carts in 64 or 96 gallon cart sizes, with 32 gallon Recyclables Materials and Organic Waste Carts available

on request. CONTRACTOR shall offer Debris Boxes in 10, 20, 30, and 40 cubic yard sizes. The size of the Cart shall be determined between the SFD Service Recipient and the CONTRACTOR. CONTRACTOR shall not charge for collection of Recyclable Materials or Organic Waste collected in Carts or Bins.

7.01.1.1 Curbside Collection Service. SFD Curbside Collection shall be done where Garbage, Recyclable Materials and Organic Waste Carts are placed within five (5) feet of the curb, swale, or at edge of street pavement for streets without curbs. This shall apply to both public and private streets. CONTRACTOR may charge for Curbside Collection at the rates as set forth in Exhibit 1.

7.01.1.2 On-Premise Collection Service - Subscription. A SFD Service Recipient may subscribe for On-premise SFD Collection Service where Garbage, Recyclable Materials, and Organic Waste Carts are Collected from a side-yard, backyard, or other off-street location agreed on between the CONTRACTOR and the Service Recipient. CONTRACTOR may charge for On-premise collection at the rates as set forth in Exhibit 1.

7.01.1.3 On-Premise Collection Service - Physical Disability. A SFD Service Recipient, and all other adults living at the Service Unit residing therein, that has disabilities that prevent him/her from being physically unable to place Garbage, Recyclable Materials, or Organic Waste Carts at the curb for collection shall receive On-premise Collection Service where all Garbage, Recyclable Materials, and Organic Waste Carts are Collected from a side-yard, backyard, or other off-street location agreed on between the CONTRACTOR and the Service Recipient. CONTRACTOR shall provide this service at the Curbside collection rates as set forth in Exhibit 1.

7.02 Frequency and Scheduling of Service. Except as set forth in Articles 7.07, 7.08, 7.09, 7.10, 7.13, and 7.14, SFD Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection Services shall be scheduled so that a SFD Service Unit receives SFD Garbage Collection Service, SFD Recycling Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

7.03 Non-Collection. Except as set forth in Articles 7.05.4, 7.07, 7.09, 7.10, 7.12, 7.13, and 7.14, CONTRACTOR shall not be required to Collect any Garbage, Recyclable Material, or Organic Waste that is not placed in a Cart. In the event of non-collection, CONTRACTOR shall affix to the Cart a Non-collection Notice explaining why collection was not made. CONTRACTOR shall maintain a copy of such notices during the term of this Agreement.

7.04 SFD Garbage Collection Service. This service will be governed by the following additional terms and conditions:

7.04.1 Disposal Facility. All Garbage collected as a result of performing SFD Garbage Collection Services shall be transported to, and disposed of, at the Disposal Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

7.04.2 Additional Garbage Carts. Upon notification to the CONTRACTOR by the CITY or a Service Recipient that additional Garbage Carts are requested, the CONTRACTOR shall deliver such Garbage Carts to such Service Recipient within five (5) Work Days. CONTRACTOR shall be compensated for the cost of additional Garbage Carts in accordance with the "Additional Garbage Cart" Service Rate as set forth in Exhibit 1 or as may be adjusted under the terms of this Agreement.

7.05 SFD Recycling Collection Service. This service will be governed by the additional following terms and conditions:

7.05.1 Material Recovery Facility. All Recyclable Materials Collected as a result of performing Recycling Services shall be delivered to the Materials Recovery Facility. Failure to comply with this provision shall result in the levy of liquidated damages as specified in this Agreement. All expenses related to Recyclable Materials processing and marketing will be the sole responsibility of CONTRACTOR.

7.05.2 Additional Recycling Carts. CONTRACTOR shall provide additional SFD Recycling Carts to SFD Collection Service Recipients within five (5) days of request at no additional cost provided that additional carts are used by Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Recycling Collection Service.

7.05.3 Overages. Corrugated cardboard or other recyclable materials that will not fit inside the Recycling Cart may be flattened, bagged and/or bundled and placed beside the Recycling Cart.

7.05.4 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

7.05.5 Collection of Service Recipients Discarded Collection Containers. The CONTRACTOR shall collect used, discarded, or unwanted collection containers discarded by the Service Recipient that were in use for collection prior to July 1, 20xx at no cost. To the extent feasible, CONTRACTOR shall recycle, or cause to have recycled the used, discarded, or unwanted collection containers. CONTRACTOR collection of discarded containers shall be done in accordance with Exhibit 6.

7.05.6 Recycling - Improper Procedure. Except as set forth below in Article 7.10, the CONTRACTOR shall not be required to Collect Recyclable Materials if the Service Recipient does not segregate the Recyclable Materials from Garbage or Organic Waste. If Recyclable Materials are contaminated through commingling with Garbage or Organic Waste, the CONTRACTOR shall, if practical, separate the Garbage or Organic Waste from the Recyclable Materials. The Recyclable Materials shall then be Collected and the Garbage or Organic Waste shall be left in the Recycling Cart along with a Non-collection Notice explaining why the Garbage or Organic Waste is not considered a Recyclable Material. However, in the event the Recyclable Materials and Garbage or Organic Waste are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the Garbage or Organic Waste renders the entire Recycling Cart contaminated, the CONTRACTOR will leave the Recycling Cart un-emptied along with a Non-collection Notice that contains instructions on the proper procedures for setting out Recyclable Materials.

7.06 SFD Organic Waste Collection Service. This service will be governed by the following terms and conditions:

7.06.1 Organic Waste Processing Services. CONTRACTOR shall ensure that all Organic Waste Collected pursuant to this Agreement are diverted from the landfill in accordance with AB 939 and any subsequent or other applicable legislation and regulations.

7.06.2 Organic Waste Processing Facility. CONTRACTOR shall deliver all Collected Organic Waste to a fully permitted Organic Waste Processing Facility or a fully permitted Organic Waste transfer station. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

7.06.3 Organic Waste Disposal. CONTRACTOR shall ensure that the Organic Waste Collected pursuant to this Agreement is not disposed of in a landfill, except as a residue resulting from processing.

7.06.4 Additional Organic Waste Carts. CONTRACTOR shall provide additional SFD Organic Waste Carts to SFD Service Recipients within five (5) days of request at no additional cost provided that additional carts are used by SFD Service Recipients for the purposes of setting out additional Organic Waste Materials for regular weekly Organic Waste Collection Service.

7.06.5 Additional Kitchen Food Waste Pails. CONTRACTOR shall provide additional Kitchen Food Waste Pails to SFD Service Recipients within five (5) days of request at no additional cost provided that additional pails are used by SFD Service Recipients.

7.07 Home Compost Bins. CONTRACTOR shall provide, at no additional cost, a Bio-Stack Compost Bin to any SFD Collection Service Recipient that request one. CONTRACTOR shall rebate a SFD Collection Service Recipient an amount equal to the cost of a Bio-Stack compost Bin if the SFD Collection Service Recipient submits a receipt for a more expensive compost tumbler or compost Bin if approved in advance by the CITY that they purchased after the start date of the Agreement.

7.08 Home Worm Bin. CONTRACTOR shall provide, at no additional cost, a Home Worm Bin to all SFD Service Recipients that request a home worm Bin.

7.09 Curbside Holiday Tree Collection. CONTRACTOR shall Collect Holiday Trees from all SFD Service Units as part of the SFD Organic Waste Collection Services. CONTRACTOR shall provide this service beginning on the first Work Day after December 25 until January 15, or dates approved by the CITY.

7.09.1 Contaminated Holiday Trees. Holiday trees that are flocked or contain tinsel or other decorations may be delivered to the Disposal Facility at the discretion of the CONTRACTOR.

7.09.2 Non-collection. CONTRACTOR shall not be required to Collect any Organic Waste that is mixed with either Garbage, or Recyclable Materials. In the event of non-collection, CONTRACTOR shall affix to the Organic Waste Cart a Non-Collection Notice explaining why collection was not made. CONTRACTOR shall maintain a copy of such notices during the term of this Agreement. CONTRACTOR shall maintain a copy of such notices during the term of this Agreement.

7.10 Bulky Waste Collection Service. This service will be governed by the following terms and conditions:

7.10.1 Conditions of Service. The CONTRACTOR shall provide SFD Bulky Waste Collection Service to all SFD Service Units in the Service Area whose Bulky Waste have been placed within five (5) feet of the curb, swale, paved surface of the public or private roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S collection crew and vehicle. Each SFD Service Unit in the Service Area shall be entitled to receive free Bulky Waste Collection Service a maximum of two (2) collection times per

Agreement Year. Bulky Waste Collection Service shall be a combination of loose Large Items not exceeding an approximately equivalent of four (4) cubic yards and three (3) individual Large Items such as a TV, couch, or water heater. In accordance with the "Additional Bulky Waste Collection" service rate as set in Exhibit 1, CONTRACTOR shall be compensated for the cost of Collecting Large Items in excess of 1) a single collection of over four (4) cubic yards, 2) more than two (2) Bulky Waste Collections per year, or more than three (3) individual Large Items during any single Bulky Waste Collection.

7.10.2 Frequency of Service. SFD Service Recipients must call at least forty-eight (48) hours in advance to schedule SFD Bulky Waste Collection Service. Collection will occur on the customer's regular collection day.

7.10.3 Large Items Containing Freon. In the event CONTRACTOR Collects Large Items that contain Freon, CONTRACTOR shall handle such Large Items in a manner such that the Large Items are not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations. CONTRACTOR may charge for collecting Large Items containing Freon in accordance with the Maximum Service rates in Exhibit 1.

7.10.4 Maximum Reuse and Recycling. CONTRACTOR shall dispose of Large Items collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

7.10.4.1 Reuse as is (where energy efficiency is not compromised)

7.10.4.2 Disassemble for reuse or Recycling

7.10.4.3 Recycle

7.10.4.4 Disposal

7.10.5 CITY Direction of Large Items. CITY reserves the right to direct CONTRACTOR to take Large Items Collected pursuant to this Section to a designated site or sites for the purpose of permitting persons who will reuse or recycle such Large Items to obtain the Large Items at no cost. CONTRACTOR shall have no obligation to dispose of the Large Items or Large Item residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Large Items. CONTRACTOR shall be entitled to an adjustment to the service rates to reflect any increased costs arising from the CITY's direction.

7.11 Hard to Service Areas. Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR, at no additional cost, shall manually collect SFD Garbage, Recyclable Materials, Organic Waste, and Bulky Waste from a SFD Service Unit as follows:

7.11.1 Where topography, street conditions, or limited street access for police, fire, or safety vehicles prevents CONTRACTOR'S collection vehicle access for Collecting Garbage, Recycling, Organic Waste, and Large Items for collection.

7.11.2 Where Service Units located in the areas and streets as listed in **Exhibit 15.**

7.11.3 Where the City Representative notifies the CONTRACTOR of any additional Service Units requiring service; along with the date such service is to begin.

7.12 Curbside Household Hazardous Waste (HHW) Collection. The CONTRACTOR shall provide curbside collection of HHW as part of CONTRACTOR'S regularly scheduled SFD Recycling Collection Service.

7.12.1 Materials collected through curbside HHW Collection shall include dry cell household batteries, PDAs, cell phones, used motor oil, used oil filters when contained in a sealed plastic bag; cooking oil; water-based paint, and compact fluorescent light bulbs contained in a sealed plastic bag .

7.12.2 CONTRACTOR shall provide one-gallon used oil containers and heavy duty- zip-lock bags for used oil filters.

7.13 On-Call Household Hazardous Waste (HHW) Collection. The CONTRACTOR shall provide on-call collection of HHW. CONTRACTOR shall provide collection when SFD Service Recipients call at seven (7) calendar days in advance to schedule collection, and identify a secure location on their property from which the materials will be collected. CONTRACTOR shall be entitled to payment as specified in Exhibit 1.

7.13.1 Materials collected through on-call HHW Collection shall include cleaning products, pesticides, herbicides, insecticides, painting supplies, automotive products, fuel, lubricants, paint, solvents, stripes, and adhesives, auto batteries, non-controlled medicines, Sharps, and Universal Waste.

7.14 SFD Debris Box Collection Service. Upon twenty four (24) hours request by a SFD Service Unit for a Debris Box Container, CONTRACTOR shall provide a Debris Box Container at the Service Unit. Such SFD Debris Box Collection Service shall be on a temporary basis not to exceed seven (7) days without collection, emptying, and replacement of the Debris Box Container.

7.14.1 Debris Box Containers shall be transported by CONTRACTOR to an approved processing facility to achieve maximum diversion.

7.14.2 Charges for Debris Box Containers shall be in accordance with Exhibit 1 of this Agreement.

7.14.3 The CONTRACTOR shall provide SFD Debris Box Collection Services with as little disturbance as possible and shall leave any Debris Box Containers in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR shall only place Debris Boxes in strict adherence with the CITY'S right-of-way requirements and Municipal Code.

7.14.4 CONTRACTOR shall remove any and all graffiti within 24 hours of being identified by the CONTRACTOR or City Representative. CONTRACTOR shall not deliver a Debris Box Container without CONTRACTOR information or with any graffiti visible on the Debris Box Container.

ARTICLE 8. MFD Collection Services

8.01 MFD Collection Services. These services will be governed by all conditions of service as specified in Article 9 of this Agreement, with the following additional services:

8.01.1 Kitchen Food Waste Pails. CONTRACTOR shall provide Kitchen Food Waste Pails to all MFD Service Units.

8.01.2 MFD Recycling Tote Bags. CONTRACTOR shall provide Recycling Tote Bags to MFD Service Units upon seventy-two (72) hours of request by the MFD Service Unit.

8.01.3 Additional Kitchen Food Waste Pails. CONTRACTOR shall provide an additional Kitchen Food Waste Pail to MFD Service Recipients within five (5) days of request at no additional cost provided that additional pails are used by MFD Service Recipients for the purposes of setting out additional Food Waste for regular weekly Organic Collection Service.

8.01.4 MFD Bulky Waste Collection. The CONTRACTOR shall provide MFD Bulky Waste Collection Service to MFD Service Units in the Service Area in a manner agreed to between the CONTRACTOR and the MFD Service Unit management. CONTRACTOR shall be compensated for the cost of Collecting Bulky Waste in accordance with the "MFD Bulky Waste Collection" Maximum Service Rate as set in Exhibit 1 of this Agreement.

ARTICLE 9. Commercial Collection Services

9.01 Commercial Collection Services. These services will be governed by the following terms and conditions:

9.01.1 Conditions of Service. The CONTRACTOR shall provide Commercial Garbage Collection Service, Commercial Recycling Collection Service, Commercial Organic Waste Collection Service, and Commercial Debris Box Collection Service to all Commercial Service Units in the Service Area whose Garbage, Recyclable Materials, and Organic Waste are properly containerized in Bins, Carts, or Debris Boxes as appropriate where the Bins, Carts or Debris Boxes are accessible as set forth in Article 9.01.3. CONTRACTOR shall offer Garbage Carts in 32, 64 and 96 gallon cart sizes, and Recyclable Materials and Organic Waste Carts in 64 or 96 gallon cart sizes, with 32 gallon Recyclable Materials and Organic Waste Carts available on request. CONTRACTOR shall offer Garbage, Recyclable Materials, and Organic Waste Bins in 1, 2, 3, 4, and 6 cubic yard sizes. CONTRACTOR shall offer Debris Boxes in 10, 20, 30, and 40 cubic yard sizes. The size of the container and the frequency (above the minimum) of collection shall be determined between the Service Recipient and the CONTRACTOR. However, the size and frequency shall be sufficient to provide that no Garbage, Recyclable Materials, or Organic Waste Materials need be placed outside the Bin, Cart or Debris Box.

9.01.2 Required Capacity. CONTRACTOR shall provide Commercial Recycling Collection Service and Organic Waste Collection Service to all Commercial Service Units in the Service Area at no additional cost. For each Service Unit, CONTRACTOR shall offer a minimum capacity of Commercial Recycling Collection and Commercial Organic Waste Collection Service appropriate to the capacity measured as the total cubic yards collected weekly for Commercial Garbage Collection Service.

9.01.3 Accessibility. CONTRACTOR shall collect all Garbage, Recycling, or Organic Waste Bins or Carts that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of Commercial Collection Services. Push services shall include, but not be limited to moving manually or by a specialized "scout" truck the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location.

9.01.4 Manner of Collection. The CONTRACTOR shall provide Commercial Collection Service with as little disturbance as possible and shall leave any Bin or Cart at the same point it was originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

9.02 Commercial Garbage Collection Service. This service shall be governed by the following additional terms and conditions:

9.02.1 Conditions of Service. The CONTRACTOR shall provide Commercial Garbage Collection Service to all Commercial Service Units in the Service Area whose Commercial Garbage is properly containerized in Garbage Bins or Carts, where the Garbage Bins or Carts are accessible.

9.02.2 Disposal Facility. All Commercial Garbage collected as a result of performing Commercial Garbage Collection Services shall be transported to, and disposed of, at the Disposal Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

9.02.3 Size and Frequency of Service. This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection Service scheduled to fall on a holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the customer. The size of the container and the frequency (above the minimum) of Collection shall be determined between the customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Commercial Garbage need be placed outside the Bin or Cart. The CONTRACTOR shall provide containers as part of the Commercial Collection Service rates set forth in Exhibit 1, however, customers may own their Compactor provided that the customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR'S equipment.

9.02.4 Commercial Garbage Overflow. In the case of repeated overflows of Commercial Garbage, CONTRACTOR shall contact the Commercial Service Unit management to arrange for an appropriate change in Garbage Bin or Cart size, collection frequency or both. In the event, CONTRACTOR cannot successfully contact the Commercial Service Unit management after three attempts, or cannot reach an agreement with such management regarding the change in service, CONTRACTOR shall advise the City Representative, either by Fax or e-mail, of the details of the Commercial Garbage overages, and the attempts at communication with the Commercial Service Unit management. The City Representative shall respond to CONTRACTOR'S report and make a final written determination. Within five (5) Work Days of receipt of the City Representative's written determination, CONTRACTOR shall change the Collection Service in accordance with such written determination.

9.02.5 Non-Collection. CONTRACTOR shall not be required to collect any Commercial Garbage that is not placed in a Garbage Bin or Cart unless such Commercial Garbage is outside the Garbage Bin or Cart as a result of overflow. In the event of non-collection, CONTRACTOR shall affix to the Garbage Bin or Cart a Non-collection Notice explaining why collection was not made.

9.03 Commercial Recycling Collection Service. This service will be governed by the following terms and conditions:

9.03.1 Conditions of Service. The CONTRACTOR shall provide Commercial Recycling Collection Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Carts or Debris Boxes, except as set forth below, where the Recycling Bins, Carts, or Debris Boxes are accessible. CONTRACTOR may not charge for collection of Recyclable Materials. Commercial Recycling Collection will occur Monday – Friday, and on Saturdays upon request.

9.03.2 Material Recovery Facility. All Recyclable Materials collected as a result of performing Commercial Recycling Services shall be delivered to the Material Recovery Facility. Failure to comply with this provision shall result in the levy of an liquidated damages as specified in this Agreement. All expenses related to Recyclable Materials processing and marketing will be the sole responsibility of CONTRACTOR.

9.03.3 Size and Frequency of Service. This Service shall be provided as deemed necessary and as determined between the CONTRACTOR and the customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that collection service scheduled to fall on a holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart or Debris Box at the option of the customer. The size of the container and the frequency (above the minimum) of collection shall be determined between the customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the Bin, Cart or Debris Box. The CONTRACTOR shall provide containers as part of the Commercial Collection Service rates set forth in Exhibit 1, however, customers may own their Compactor provided that the customer is completely responsible for its proper maintenance and such Compactor shall be of a type that can be serviced by the CONTRACTOR'S equipment.

9.03.4 Additional Recycling Bins or Carts. CONTRACTOR shall provide additional Commercial Recycling Bins and Carts to Commercial Service Recipients within five (5) days of request at no additional cost provided that additional bins and carts are used by Commercial Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Recycling Collection Service.

9.03.5 Recycling - Improper Procedure. If Recyclable Materials are contaminated through commingling with Commercial Garbage, the CONTRACTOR shall, if practical, separate the Commercial Garbage from the Recyclable Materials. The Recyclable Materials shall then be collected and the Commercial Garbage shall be left in the Recycling Bin, Cart or Debris Box along with a Non-collection Notice of why the Garbage is not considered a Recyclable Material. However, in the event the Recyclable Materials and Commercial Garbage are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the Commercial Garbage renders the entire Recycling Bin, Cart or Debris Box contaminated, the CONTRACTOR will leave the Recycling Bin, Cart or Debris Box un-emptied along with a Non-collection Notice which contains instructions on the proper procedures for setting out Recyclable Materials. Upon notification from the City Representative, CONTRACTOR shall collect the contaminated Recyclable Materials as part of the next regularly scheduled Commercial Garbage Collection and dispose of it at the Disposal Facility.

9.03.6 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

9.04 Commercial Organic Waste Service. This service will be governed by the following terms and conditions:

9.04.1 Conditions of Service. The CONTRACTOR shall provide Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area whose Organic Waste materials are properly containerized in Organic Waste Bins, Carts, Debris

Boxes, or Compactors except as set forth below, where the Organic Waste Bins, Carts, debris Boxes, or Compactors are accessible. CONTRACTOR shall not charge for collection of Organic Waste collected in Carts or Bins. CONTRACTOR agrees that the provision of Commercial and MFD Organic Waste Collection Service at no cost to Commercial and MFD Service Units is critical to CONTRACTOR's ability to meet the Diversion Requirements as set forth in Article 5 of this Agreement. CONTRACTOR further agrees that not all Commercial and MFD Service Units will elect to receive Organic Waste Collection Service in Carts, and that CONTRACTOR will provide Organic Waste Collection Bins upon request and as necessary. Further, CONTRACTOR agrees that there are several Commercial Service Units that utilize Compactors for collection of Organic Waste, and that CONTRACTOR will provide a sufficient number of Carts or Bins and at a collection frequency to allow for any such Commercial Service Unit to utilize the free collection of Organic Waste. Commercial Organic Waste Collection will occur Monday – Friday, and on Saturdays upon request and as necessary.

9.04.2 Organic Waste Processing Facility. All Organic Waste collected as a result of performing Commercial Collection Services shall be delivered to the Organic Waste Processing Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

9.04.3 Size and Frequency of Service. This Service shall be provided as deemed necessary and as determined between the CONTRACTOR and the customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection Service scheduled to fall on a holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart or Debris Box at the option of the customer. The size of the container and the frequency (above the minimum) of collection shall be determined between the customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Organic Waste Materials need be placed outside the Bin, Cart or Debris Box. The CONTRACTOR shall provide containers as part of the Commercial Collection Service rates set forth in Exhibit 1, however, customers may own their Compactor provided that the customer is completely responsible for its proper maintenance and such Compactor shall be of a type that can be serviced by the CONTRACTOR'S equipment.

9.04.4 Additional Organic Waste Bins or Carts. CONTRACTOR shall provide additional Commercial Organic Waste Bins and Carts to Commercial Service Recipients at no additional cost provided that additional bins and carts are used by Commercial Service Recipients for the purposes of setting out additional Organic Waste materials for regular weekly Organic Waste Collection Service.

9.04.5 Organic Waste - Improper Procedure. If Organic Waste is contaminated through commingling with Commercial Garbage, the CONTRACTOR shall, if practical, separate the Commercial Garbage from the Organic Waste. The Organic Waste shall then be collected and the Commercial Garbage shall be left in the Organic Waste Bin, Cart or Debris Box along with a Non-collection Notice of why the Organic Waste is not collected. However, in the event the Organic Waste and Commercial Garbage are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the Commercial Garbage renders the entire Organic Waste Bin, Cart or Debris Box contaminated, the CONTRACTOR will leave the Organic Waste Bin, Cart or Debris Box un-emptied along with a Non-collection Notice which contains instructions on the proper procedures for setting out Organic Waste. Upon notification from the City Representative, CONTRACTOR shall collect

the contaminated Organic Waste as part of the next regularly scheduled Commercial Garbage Collection and dispose of it at the Disposal Facility.

9.05 Organic Waste - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the types of items included as Organic Waste, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be

9.06 Commercial Debris Box Collection Service. Upon request of a Commercial Service Unit, CONTRACTOR shall provide a Commercial Debris Box Collection Service on a temporary basis or permanent basis.

9.06.1 Debris Boxes shall be transported by CONTRACTOR to an approved processing facility to achieve maximum diversion.

9.06.2 Charges for Debris Boxes shall be in accordance with Exhibit 1 of this Agreement.

9.06.3 The CONTRACTOR shall provide Commercial Debris Box Collection Services with as little disturbance as possible and shall leave any Debris Boxes in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR shall only place Debris Boxes in strict adherence with the CITY'S right-of-way requirements and Municipal Code.

9.06.4 CONTRACTOR shall remove any and all graffiti within 24 hours of being identified by the CONTRACTOR or City Representative. CONTRACTOR shall not deliver a Debris Box without CONTRACTOR information or with any graffiti visible on the Debris Box.

ARTICLE 10. CITY Collection Services

10.01 CITY Collection Services.

10.01.1 CONTRACTOR shall provide Garbage, Recycling, Organic Waste Collection Services, and Debris Box Collection Service to City Service Units as deemed necessary and as determined between the CONTRACTOR and the CITY, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that collection service scheduled to fall on a holiday may be rescheduled as determined between the customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart or Debris Box at the option of the CITY. CONTRACTOR shall offer Garbage Carts in 20, 32, 64 and 96 gallon cart sizes and Bins in 1 – 6 cubic yard sizes, and Recyclables Materials and Organic Waste Carts in 32, 64 and 96 gallon cart sizes and Bins in 1 – 6 cubic yard sizes. CONTRACTOR shall not charge for collection of Recyclable Materials or Organic Waste collected in Carts or Bins. CONTRACTOR shall offer Debris Boxes in 10, 20, 30, and 40 cubic yard sizes. The size of the container and the frequency (above the minimum) of collection shall be determined between the CITY and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Garbage, Recyclable Materials, or Organic Waste needs to be placed outside the Bin, Cart or Debris Box. City Service Units are listed in Exhibit 2. CONTRACTOR may charge the CITY at the Maximum Service Rates as specified in Exhibit 1.

10.01.2 Public Containers Collection. CONTRACTOR shall provide collection, transporting and disposal or processing service to those public Garbage, Organic Waste or Recycling containers in place or placed by the CITY, or as designated by the CITY, and other

CITY properties during the term of this Agreement. Frequency of collection shall be seven (7) days per week per container, and twice on Saturdays to avoid overflows. CONTRACTOR may charge the CITY at the Maximum Service Rates as specified in Exhibit 1.

10.01.3 Green Waste Drop-off. CONTRACTOR will provide for City residents, landscapers and gardeners that provide service to SFD and MFD Service Units within the CITY to drop-off green waste at an approved drop-off location as specified in Exhibit 3. CONTRACTOR may charge a green waste drop off fee at the Maximum Service Rates as specified in Exhibit 1.

10.01.4 Accessibility. CONTRACTOR shall collect all carts, bins and debris boxes that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of CITY Collection Services. Push services shall include, but not be limited to, dismounting from the collection vehicle, moving the bins or carts from their storage location for collection and returning the bins or carts to their storage location.

10.01.5 Notification. The CONTRACTOR will notify the City Representative daily, by Fax and e-mail, of all situations that prevent or hinder collection from any City Service Unit, unless otherwise directed by CITY.

10.02 Disposal and Processing Facilities.

10.02.1 Disposal Facility. All Garbage collected as a result of performing City Garbage Collection Services shall be transported to, and disposed of, at the Disposal Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

10.02.2 Material Recovery Facility. All Recyclable Materials collected as a result of performing City Recycling Services shall be delivered to the Material Recovery Facility. Failure to comply with this provision shall result in the levy of an liquidated damages as specified in this Agreement. All expenses related to Recyclable Materials processing and marketing will be the sole responsibility of CONTRACTOR.

10.02.3 Organic Waste Processing Facility. All Organic Waste collected as a result of performing City Collection Services shall be delivered to the Organic Waste Processing Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

10.03 Donated Services. CONTRACTOR has offered to donate the following services as corporate good will, and such provisions of donated services shall have no rate impact of any kind to the CITY, or any SFD, MFD, or Commercial Service Recipient.

10.03.1 Code Enforcement. In response to the request of the City Representative, CONTRACTOR shall within twenty-four (24) hours provide for temporary clean-up programs in the Service Area. CONTRACTOR shall transport and deliver the collected materials to the Disposal Facility, the Materials Recovery Facility, or such other facility as is appropriate for the disposition of the materials and approved by the City Representative.

10.03.1.1 CONTRACTOR may provide for the collection of materials at a City Requested Clean-up Service event in a collection vehicle Bin, Cart, or a Debris Box Container.

10.03.1.2 Each Agreement Year, CONTRACTOR shall provide for a maximum of four hundred (400) cubic yards of collection from CITY Code Enforcement Clean-up Services. CONTRACTOR shall be entitled to charge the CITY for amounts that exceed 400 cubic yards per Agreement

10.03.2 City Sponsored Events. CONTRACTOR shall provide Collections Services at CITY-sponsored events as requested by CITY. Such services shall be provided in such a manner that all collection, processing and disposal needs, and related staff support and public education materials for the event are adequately and properly provided for by CONTRACTOR. City Sponsored Events are set forth on Exhibit 5, attached to and included in this Agreement.

10.03.3 Abandoned Waste Collection. CONTRACTOR shall direct its collection vehicle drivers to note (i) the addresses of any premises at which the driver observes that Garbage, Recyclable Material, and/or Organic Waste Material is accumulating; and (ii) the address, or other location description, at which Garbage, Recyclable Material, and/or Organic Waste has been dumped in an apparently unauthorized manner. CONTRACTOR shall deliver the address or description to CITY within three (3) Work Days of such observation.

10.03.4 Compost Delivery. Upon request by the City Representative, CONTRACTOR shall provide premium quality compost materials delivered to locations and in amounts as requested by the City Representative, provided that the total amount during any single Agreement Year does not exceed three-hundred sixty (360) cubic yards. Such delivery of compost shall be made within seventy-two (72) hours upon request by the City Representative. CONTRACTOR shall also deliver premium quality compost to individual Service Unit seventy-two (72) hours upon request of a Service Recipient. The quantity of CONTRACTOR deliveries of premium compost and shall be a minimum of five (5) cubic yards.

10.03.5 Community Reuse E-Network. CONTRACTOR will develop, implement, and manage a Community Reuse E-Network to promote the reuse of Large Items as specified in Exhibit 14.

10.03.6 School Recycling Program. CONTRACTOR shall provide a school recycling program as specified in Exhibit 13. CONTRACTOR'S School Recycling Program shall include, at a minimum, on-site classroom visits, worm composting, internships, written and electronic materials, and sponsorship of environmental field trips.

ARTICLE 11. Collection Routes

11.01 Collection Routes. Ninety (90) days prior to commencement of Collection Services, the CONTRACTOR shall provide the CITY with maps precisely defining collection routes, together with the days and the times at which collection shall regularly commence. To the extent possible, CONTRACTOR will provide the map data in a GIS format that is compatible with the format used by the CITY.

11.02 Subsequent Collection Route Changes. The CONTRACTOR shall submit to the CITY, in writing, any proposed route change (including maps thereof) not less than sixty (60) calendar days prior to the proposed date of implementation. To the extent possible, CONTRACTOR will provide the map data in a GIS format that is compatible with the format used by the CITY. The CONTRACTOR shall not implement any route changes to SFD Service Recipients without the prior review of the City Representative. If the route change will change the collection day for a Service Recipient, the CONTRACTOR shall notify those Service

Recipients in writing of route changes not less than thirty (30) days before the proposed date of implementation.

11.02.1 Collection Route Audits. The CITY reserves the right to conduct audits of CONTRACTOR'S collection routes. The CONTRACTOR shall cooperate with the CITY in connection therewith, including permitting CITY employees or agents, designated by the City Representative, to ride in the collection vehicles in order to conduct the audits. The CONTRACTOR shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the City Representative to conduct such audits.

ARTICLE 12. Collection Vehicles

12.01 General Provisions. All collection vehicles used by CONTRACTOR in the performance of services under this Agreement shall be of a high quality. At the start of this Agreement, all route collection vehicles utilized by CONTRACTOR pursuant to this Agreement shall be new 20xx/20xx manufactured vehicles as specified in **Exhibit 16**.

12.02 Vehicle Registration, Licensing and Inspection. On or before July 1, 20xx and upon request by the CITY thereafter during the term of this Agreement, CONTRACTOR shall submit documentation to the CITY Representative to verify that each of the CONTRACTOR'S collection vehicles is in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. CONTRACTOR shall not use any vehicle to perform Collection Services that is not in compliance with applicable registration, licensing and inspection requirements. Each vehicle shall comply, at all times, with all applicable statutes, laws or ordinances of any public agency. Routine inspections by the California Highway Patrol will be required bi-annually and certificates for said inspection shall be filed with the CITY upon request.

12.03 Clean Air Vehicles. During the term of this Agreement, to the extent required by law, CONTRACTOR shall provide its collection vehicles to be in full compliance with local, State and federal clean air requirements that were adopted or proposed to be adopted, including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control

12.04 Fuel Type. CONTRACTOR shall utilize compressed natural gas (CNG) as the fuel type for all its collection vehicles, and to the extent possible CNG, bio-diesel or hybrid electric or all its support vehicles.

12.05 Global Positioning Systems (GPS). CONTRACTOR shall provide all route collection vehicles equipped with fully functioning on-board GPS with direct and real-time linkages to CONTRACTOR'S customer service system.

12.06 Vehicle Noise Level. All collection operations shall be conducted as quietly as possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR Part 205, and other applicable state, County, and City noise control regulations.

12.07 Safety Equipment. All collection equipment used by CONTRACTOR shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle

Code, as may be amended from time to time. All collection vehicles shall be equipped with audible back-up warning devices and back-up warning devices.

12.08 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of contrasting color, at least six (6) inches high, on each side and the rear of each vehicle that clearly states that the collection vehicle is servicing the City of _____, provides the CONTRACTOR'S name, the CONTRACTOR'S customer service telephone number, and the number of the vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials and Organic Waste programs. CONTRACTOR shall repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the City Representative.

12.09 Vehicle Maintenance. CONTRACTOR shall maintain collection vehicles in a clean condition and in good repair at all times and ensure that no Collected materials, oil, grease, or other substances will blow, fall out, escape or leak out of the vehicle, with the exceptions of vehicle emission. All parts and systems of the collection vehicles shall operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all collection vehicles at least once a week.

12.10 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon request of City Representative, and shall show, at a minimum, each vehicles' CONTRACTOR assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

12.11 Equipment Inventory. On or before July 1, 20xx, and April 1st annually thereafter, CONTRACTOR shall provide to CITY an inventory of collection vehicles and major equipment used by CONTRACTOR for collection or transportation and performance of services under this Agreement. The inventory shall indicate each collection vehicle by CONTRACTOR assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance status. CONTRACTOR shall submit to the City Representative, either by Fax or e-mail, an updated inventory annually to the CITY or more often at the request of the City Representative. Each vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all collection vehicles meet the requirements of this Agreement.

12.12 Reserve Equipment. The CONTRACTOR shall have available to it, at all times, reserve collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

ARTICLE 13. Customer Service

13.01 Customer Service Program. CONTRACTOR shall develop, implement, and maintain a Customer Service Program approved by the CITY to ensure that all services provided under this Agreement are provided a high quality. CONTRACTOR'S Customer Service Plan is attached as Exhibit 9 of this Agreement.

13.02 CONTRACTOR'S Office. The CONTRACTOR shall maintain an office that provides toll-free telephone access to residents and businesses of the CITY and is staffed by

trained and experienced Customer Service Representatives (CSRs). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during collection hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. on regularly scheduled Work Days (Monday through Friday) and when service is scheduled to be provided on Saturdays. The CONTRACTOR shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

13.03 Emergency Contact. The CONTRACTOR shall provide the City Representative with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours with a two (2) hour response time.

13.04 Multilingual/TDD Service. CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English and such other languages as CITY may reasonably direct. CONTRACTOR shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

13.05 Service Recipient Calls. During office hours, CONTRACTOR shall maintain a telephone answering system capable of accepting at least ten (10) incoming calls at one (1) time. CONTRACTOR shall record all calls including any inquiries, service requests and complaints into a customer service log.

13.05.1 Response to Calls. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where Service Recipient can leave a message. CONTRACTOR'S customer service representative shall return Service Recipient calls. For all messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to noon the next Work Day. CONTRACTOR shall make minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. If CONTRACTOR is unable to reach the Service Recipient on the next Work Day, the CONTRACTOR shall send a postcard to the Service Recipient on the second Work Day after the call was received, indicating that the CONTRACTOR has attempted to return the call.

13.06 Website. CONTRACTOR shall develop and maintain a state-of-the-art website dedicated to services provided in the CITY that is accessible by the public. The web site shall include answers to frequently asked questions, rates for Collection Services, listing and description of Recyclable Materials and Organic Waste, Collection Service schedules and maps, and other related topics. CONTRACTOR shall arrange for the CITY'S website to include an e-mail link to CONTRACTOR and a link to CONTRACTOR'S website. The CONTRACTOR'S website shall provide the public the ability to e-mail complaints to CONTRACTOR and request services or service changes. CONTRACTOR'S website shall also promote reuse and recycling, graphics and statistic illustrating the City progress toward becoming a Zero Waste Community, resources the community can use to support Zero Waste and Sustainability efforts, other CITY'S environmental programs, and other materials as requested by the CITY. The CITY shall review and approve CONTRACTOR'S website.

ARTICLE 14. Public Outreach Services

14.01 Public Outreach Services. CONTRACTOR, at its own expense, shall prepare, submit and implement an annual (Agreement Year) Public Education and Outreach Plan that incorporates key feature of CONTRACTOR'S Public Education Program (**Exhibit 7**), Community Involvement Plan (**Exhibit 12**) HHW Collection Plan (**Exhibit 11**), School Recycling Plan (**Exhibit 13**), and Community Reuse E-Network Plan (**Exhibit 14**). The proposed action plans must be submitted annually for CITY approval no later than August 1, 20xx, and no later than April 1st each Agreement Year thereafter. The program must include a specific steps designed to increase diversion and participation, for the City's residents, businesses, and Public Schools. Campaigns should target certain diverted materials or "problem" areas of the CONTRACTOR'S Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the City Representative and CONTRACTOR staff. The CONTRACTOR shall provide space in CONTRACTOR'S public outreach materials, such as mailers, flyers and newsletters, for the CITY to include announcements, community information, articles, and photographs. The Public School campaigns shall correspond with the school year and should target student, faculty and staff participation in the diversion of Recyclable Materials and Organic Waste.

14.02 Recycling Coordinator. CONTRACTOR will provide for the equivalent a full-time Recycling Coordinator dedicated to the CITY. CONTRACTOR may use an Approved Subcontractors as listed in Exhibit 4 to perform some or all the duties normally assigned to the Recycling Coordinator.

14.03 Annual Collection Service Notice. Each Agreement Year during the term of this Agreement, the CONTRACTOR shall publish and distribute separate notices to all SFD Service Units regarding the SFD Collection Service, to all MFD Service Units regarding MFD Collect Service, and to all Commercial Service Units regarding Commercial Collection Service. To the extent appropriate, based on the category of customer receiving the notice, it shall contain at a minimum: definitions of the materials to be collected, procedures for setting out the materials, collection and disposal options for unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day of the week that Collection Service will be provided, and the CONTRACTOR customer service phone number and website address. The notice shall be provided in English, and other languages as reasonably directed by the CITY, and shall be distributed by the CONTRACTOR no later than November 1st each Agreement Year.

14.04 Additional Programs and Services. CONTRACTOR shall provide additional services and programs as requested by CITY at a price to be mutually agreed upon between the CONTRACTOR and the City Representative. In the event the CONTRACTOR and the City Representative cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.

14.05 News Media Relations. CONTRACTOR shall notify the City Representative by Fax, e-mail or phone of all requests for news media interviews related to the Collection Services program within twenty-four (24) hours of CONTRACTOR'S receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with the City Representative.

14.05.1 Copies of draft news releases or proposed trade journal articles shall be submitted to CITY for prior review and approval at least five (5) Work Days in advance of

release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR shall submit such materials to CITY simultaneously with CONTRACTOR'S submittal to such regulatory agency.

14.05.2 Copies of articles resulting from media interviews or news releases shall be provided to the CITY within five (5) Work Days after publication.

14.06 Waste Generation and Characterization Studies. CONTRACTOR acknowledges that CITY must perform Garbage generation and characterization studies periodically to comply with AB 939 requirements. CONTRACTOR agrees to participate and cooperate with CITY and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of Garbage generated, disposed, transformed, diverted or otherwise processed to comply with AB 939.

ARTICLE 15. Emergency Service Provisions

15.01 Emergency Services. In the event of a tornado, major storm, earthquake, fire, natural disaster, or other such event, the City Representative may grant the CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, the CONTRACTOR shall advise the City Representative when it is anticipated that normal routes and schedules can be resumed. The City Representative shall make an effort through the local news media to inform the public when regular services may be resumed. The clean-up from some events may require that the CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. The CONTRACTOR shall receive additional compensation, above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 1 to this Agreement provided the CONTRACTOR has first secured written authorization and approval from the CITY through the City Representative.

ARTICLE 16. Record Keeping & Reporting Requirements

16.01 Record Keeping.

16.01.1 Accounting Records. CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection. Gross Receipts derived from provision of the Collection Services shall be recorded as revenues in the accounts of the CONTRACTOR. These records shall be separate and segregated from other records maintained by CONTRACTOR for the provision of other services outside the scope of this Agreement as may be provided by CONTRACTOR. CONTRACTOR shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the CONTRACTOR'S fiscal years.

16.01.2 Contractor Payments to the City. CONTRACTOR shall maintain records of all payments made to the CITY for all items listed in Article 4.03.

16.01.3 Tonnage Records. CONTRACTOR shall maintain records of the quantities of (i) Garbage, Recyclable Material, and Organics Waste collected, processed,

composted, and disposed under the terms of this Agreement, and (ii) Recyclable Materials and Organic Waste, by material type, purchased, sold, donated or given for no compensation, and residue disposed.

16.01.4 Records. CONTRACTOR shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this Article 16 or elsewhere in the Agreement.

16.02 Reporting Requirements. Monthly Reports shall be City Representative no later than fifteen (15) calendar days after the end of the prior month. Quarterly reports shall be submitted to the City representative no later than fifteen (15) calendar days after the end of the reporting quarter and annual reports shall be submitted to the City representative no later than thirty (30) days after the end of each preceding calendar year. Monthly, Quarterly and annual reports shall be submitted in hard copy, and shall be provided electronically via e-mail, or a compact disc using software acceptable to the CITY. Reports shall be submitted in a format mutually agreed upon between the CITY and CONTRACTOR.

16.02.1 Monthly Reports.

16.02.1.1 CONTRACTOR Payments to the City. CONTRACTOR shall report all payments made to the CITY as specified in Article 4.03, and CONTRACTOR'S Gross Receipts received delineated by SFD, MFD, Commercial, and City Collection Service.

16.02.1.2 Collection Service Census Data. CONTRACTOR shall deliver to CITY, Collection Service census data for all Service Units and shall be segregated by type of service and as appropriate, container size, number of containers and frequency of Collection.

16.02.1.3 Tonnage Data. CONTRACTOR shall deliver to CITY a listing of the actual tonnage collected, disposed, recycled, composted, and residue for the preceding month sorted between SFD, MFD Commercial and CITY Service Units, and between Debris Box Containers and all other containers to the extent practical.

16.02.2 Quarterly Reports. Quarterly reports to the CITY shall include:

16.02.2.1 Garbage Data. The number of SFD, MFD, CITY and Commercial Service Units and the number of Garbage Bins, Carts, Debris Boxes and Compactors by size and Service Unit type. A listing of the tonnage from all Collection Services, including Bulky Waste Collection Service, collected, diverted and disposed by the CONTRACTOR at the Disposal Facility for the preceding quarter sorted between SFD, MFD, Commercial and City Service Units. All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.

16.02.2.2 Recycling Data. The number of gross tons collected by material type for SFD, MFD, City and Commercial Recycling Collection Service, including Recyclable Materials collected as part of Bulky Waste Collection Service, for the preceding quarter. Indicate, by material type (and grade where appropriate), quarterly total of Recyclable Materials processed and sold including facility name and location, average price received per Ton and total Recycling Revenue received for the quarter. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate quarterly totals and location for residue disposed. All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.

16.02.2.3 Organic Waste Data. The number of gross tons collected for SFD, MFD, City and Commercial Organic Collection Service, including Green Waste

collected as part of Bulky Collection Service, for the preceding quarter. Indicate the number of Organic Waste Bins, Carts debris boxes, Compactors, and Kitchen Food Waste Pales distributed by size and Service Unit type. Indicate quarterly totals and location for residue disposed. All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.

16.02.2.4 Public Education and Information Activities.

CONTRACTOR shall report on all public education and information activities undertaken during the period, including distribution of bill inserts, collection notification tags, community information and events, school visits, tours and other activities related to the provision of Collection Services. This report shall discuss the impact of these activities on Recycling and Organic Waste program participation and provide details of events and activities planned for the next period.

16.02.2.5 Processing and Marketing Data. Recycling and Organic

Waste processing and marketing issues or conditions occurring during the previous quarter (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for SFD, MFD, Commercial and CITY programs.

16.02.2.6 Customer Service Data. A summary narrative of praises,

complements, and problems encountered with collection and processing activities and actions taken. Indicate type and number of Non-collection Notices left at Service Recipient locations. Indicate instances of property damage or injury, significant changes in operation, market factors, publicity conducted and need for publicity. A copy of the customer service log, including a summary of the type and number of complaints and their resolution. Copies of a written record of all calls related to missed pickups and responses to such calls.

16.02.2.7 Operational Problems and Actions Taken. Indicate

instances of property damage or injury, poaching or scavenging, significant changes in operation, market factors, and publicity conducted and need for publicity. Include description of Organic Waste or recyclable materials loads rejected, reason for rejection and disposition of load after rejection.

16.02.2.8 Customer Base Data. CONTRACTOR shall provide,

customer base data consisting of the number of SFD, MFD, and Commercial Service Units billed, and City Collection Services sorted by service type, container size, number of containers, and frequency of collection.

16.02.2.9 Summary of Historical and Proposed Activities.

CONTRACTOR shall provide a narrative of activities undertaken during the month and those planned or proposed for the upcoming quarter.

16.02.2.10 Summary of Contractor Payments to the City. A summary

of all payments made to the City as specified in Article 4.03, for the reporting period.

16.02.3 Annual Reports. The annual report submitted to the CITY shall

include all quarterly reports in Articles 16.02.2.1 through 16.02.2.10 summarized by quarter and averaged for the calendar year. For all annual reports beginning with the report for the second Agreement Year, the CONTRACTOR shall also include a historical comparison of the last calendar year and the average of all calendar years.

16.02.3.1 Gross Receipts and Franchise Fees. A summary of the

prior year's Gross Receipts received and franchisee fees paid broken down by SFD, MFD and Commercial Service Units.

16.02.3.2 Account Data. Account data for SFD, MFD, Commercial Service Units and City Service Units including the total number of accounts serviced, and the number of accounts, account names and addresses of collection locations per each service category.

16.02.3.3 Equipment Inventory. Updated complete inventory of collection and major processing equipment including stationary, rolling stock and collection containers by type and size.

16.02.3.4 Public Education and Information Activities. Public education and information activities undertaken during the year, including distribution of newsletters, billing inserts, other notices, collection notification tags, community information and events, tours and other activities related to the provisions of services.

16.02.3.5 Summary of Historical and Proposed Activities. CONTRACTOR shall provide a narrative of activities undertaken during the year and those planned or proposed for the upcoming year. CONTRACTOR shall provide information describing if the activity was undertaken in the previous Agreement Year or not and if not why it was added. For those activities that are not being continued, CONTRACTOR shall describe the reason the activity has been discontinued and the activity that is replacing it.

16.03 Additional Reporting. The CONTRACTOR shall furnish the CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

ARTICLE 17. Nondiscrimination

17.01 Nondiscrimination. In the performance of all work and services under this Agreement, CONTRACTOR shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability or sexual orientation. CONTRACTOR shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 18. Service Inquiries and Complaints

18.01 CONTRACTOR'S Customer Service. CONTRACTOR shall at all times provide office staff and office hours, including personnel to answer phones and phone answering capabilities when CONTRACTOR'S office is closed, as specified in Article 13 of this Agreement. All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints will be handled by the CONTRACTOR in a prompt, courteous, and efficient manner. In the case of a dispute between the CONTRACTOR and a Service Recipient, the matter will be reviewed and a decision made by the City Representative.

18.01.1 The CONTRACTOR will utilize a customer service Log to maintain a record of all inquiries and complaints in a manner prescribed by the CITY.

18.01.2 For those complaints related to missed Collections that are received by 12:00 noon on a Work Day, the CONTRACTOR will return to the Service Unit address and collect the missed Carts or Bins before leaving the Service Area for the day. For those complaints related to missed collections that are received after 12:00 noon on a Work Day, the CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For

those complaints related to repair or replacement of carts or bins, the appropriate Articles of this Agreement shall apply.

18.01.3 CONTRACTOR agrees that it is in the best interest of the CITY that all Garbage, Recyclable Materials, and Organic Waste be collected on the scheduled collection day. Accordingly, missed Collections will normally be collected as set forth herein regardless of the reason that the collection was missed. However, in the event a Service Recipient reports missed collection service more than two (2) times in any consecutive two (2) month period the City Representative will work with the CONTRACTOR to determine an appropriate resolution to that situation. In the event the CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall notify the City Representative, either by Fax or e-mail. The City Representative will investigate all disputed complaints and render a decision.

ARTICLE 19. Quality of Performance of Contractor

19.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary goals in entering into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use to the extent feasible.

19.02 Service Supervisor. CONTRACTOR has designated a supervisor to be in charge of the Collection Service within the Service Area. At least thirty (30) calendar days prior to replacing the designated supervisor CONTRACTOR shall notify CITY in writing of the name and qualifications of the new service supervisor. CONTRACTOR shall ensure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the City Representative through the use of a mobile telephone at all times that CONTRACTOR is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor. The service supervisor shall provide the CITY with an emergency phone number where the supervisor can be reached outside of normal business hours.

19.03 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and City's residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 24, the parties agree that the liquidated damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to CITY, customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with

legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

CITY Initial Here _____ CONTRACTOR Initial Here _____

CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following amounts:

LIQUIDATED DAMAGES		
Item		Amount
a.	Failure or neglect to respond to each complaint by the close of the next working day.	\$100 per incident per Service Recipient.
b.	Failure to maintain equipment in a clean, and sanitary manner.	\$100 per incident per day.
c.	Failure to have a vehicle operator properly licensed.	\$100 per incident per day.
d.	Failure to maintain office hours as required by this Agreement.	\$100 per incident per day.
e.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$100 per incident per day.
f.	Failure to display CONTRACTOR'S name and customer service phone number on collection vehicles.	\$100 per incident per day.
g.	Failure to collect a missed collection by close of the next Work Day upon notice to CONTRACTOR.	\$100 per incident per day.
h.	Failure to repair or replace damaged carts or bins within the time required by this Agreement.	\$100 per incident per day.
i.	Failure to deliver or exchange carts or bins within the time required by this Agreement.	\$100 per incident per day.
j.	Failure to meet vehicle noise requirements.	\$100 per incident per day.
k.	Failure to maintain collection hours as required by this Agreement.	\$250 per incident per day.
l.	Failure to offer and provide adequate capacity of Recyclable Materials and Organic Waste for MFD and Commercial Service Units.	\$250 per incident per day.
m.	Failure to have CONTRACTOR personnel in proper uniform.	\$250 per incident per day.
n.	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500 per incident per location.

LIQUIDATED DAMAGES		
Item		Amount
o.	Failure to repair damage to CITY property caused by CONTRACTOR or its personnel.	\$500 per incident.
p.	Failure to repair damage to City Streets directly caused by CONTRACTOR beyond normal operating wear and tear.	\$500 per incident and the actual cost of repair to CITY'S satisfaction—no cost to CITY.
q.	Failure to clean up spillage or litter caused by CONTRACTOR.	\$500 per incident per location.
r.	Failure to properly cover materials in collection vehicles.	\$500 per incident.
s.	Changing residential collection days without proper notification to the City Representative.	\$500 per incident per day.
t.	Commingling Garbage with Recyclable Materials.	\$500 per incident.
u.	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Materials or Organic Waste.	\$500 per day.
v.	Disposal of Recyclable Materials or Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.
w.	Failure to deliver any Collected materials to the CITY approved Disposal Facility, Materials Recovery Facility, or Organic Waste Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.
x.	Delivery to the Disposal Facility of any Garbage collected outside of the City boundaries of commingled with that collected as part of this Agreement.	\$5,000 each delivery
y.	Commingling of materials collected inside and outside the City of .	\$1,000 per incident.
z.	Failure to meet minimum annual Diversion Guarantee	The current disposal cost/ton for each ton under the diversion guarantee.
aa.	Failure to meet minimum annual Diversion Guarantee for two consecutive years.	May result in the denial of an extension to this Agreement.

19.04 Procedure for Review of Liquidated Damages. The City Representative may assess liquidated damages pursuant to this Article 19 on a monthly basis. At the end of each month during the term of this Agreement, the City Representative may issue a written notice to CONTRACTOR ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

19.04.1 The assessment shall become final unless, within thirty (30) calendar days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the City Representative to present evidence that the assessment should not be made.

19.04.2 The City Representative shall schedule a meeting between CONTRACTOR and the City Manager or the City Manager's designee as soon as reasonably possible after timely receipt of CONTRACTOR'S request.

19.04.3 The City Manager or the City Manager's designee shall review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR.

19.04.4 In the event CONTRACTOR does not submit a written request for a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the City Representative's determination shall be final and CONTRACTOR shall submit payment to CITY no later than fifteen (15) calendar days following final determination. Or at the sole option of CITY, if monies are owed to CONTRACTOR, CITY may deduct the liquidated damages from amounts otherwise due to CONTRACTOR.

19.04.5 CITY'S assessment or collection of liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR'S failure to perform the work and services in the manner set forth in this Agreement.

19.05 Lockouts. Because it is the intent of this Agreement that CONTRACTOR shall consistently provide the highest level of services to the residents of , CONTRACTOR shall never institute a lockout of any or all of its employees unless CONTRACTOR has previously provided an alternate plan of continuing the highest level of services during the entire possible period of such a lockout with ample fully trained substitutes for all such locked out employees, and CITY has approved such alternate plan in writing prior to such lockout being instituted by CONTRACTOR. In addition, CONTRACTOR shall fully defend, indemnify and hold harmless CITY against anything whatsoever related to any such lockout as provided in Article 23 hereof, including but not limited to any claims, proceedings, or suits against CITY relating to any such lockout. Compliance with this Article 19.05 shall in no way prevent the imposition of liquidated damages pursuant to Articles 19.03 and 19.04 hereof if CONTRACTOR fails to meet the standards or violates any provision as set forth in Article 19.03 a. through z. and aa. hereof.

ARTICLE 20. Billing Audit and Performance Reviews

20.01 Billing Audit and Performance Review.

20.01.1 Selection and Cost. The CITY may conduct one (1) billing audit and performance review ("review") of the CONTRACTOR'S performance during the initial term of this Agreement. The review will be performed by a qualified firm under contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek and accept

comments and recommendations from the CONTRACTOR. The CONTRACTOR shall be responsible for the cost of the review up to a maximum of _____ Dollars (\$XXX,000.00).

20.01.2 Purpose. The review shall be designed to meet the following objectives:

20.01.2.1 Verify that customer billing rates have been properly calculated and they correspond to the level of service received by the customer.

20.01.2.2 Verify that franchise fees, and other fees required under this Agreement have been properly calculated and paid to the CITY.

20.01.2.3 Verify CONTRACTOR'S compliance with the reporting requirements and performance standards of the Collection Service Agreement.

20.01.2.4 Verify the diversion percentages reported by the CONTRACTOR.

20.01.3 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate fully with the review and provide all requested data, including operational data, financial data and other data requested by the CITY within thirty (30) Work Days. Failure of the CONTRACTOR to cooperate or provide the requested documents in the required time shall be considered an event of default.

20.01.4 Additional Billing Audit and Performance Review. In the event that the Billing Audit and Performance Review concludes that CONTRACTOR is not in compliance with all terms and conditions of this Agreement and such non-compliance is material, the CITY may conduct an Additional Billing Audit and Performance Review to ensure that CONTRACTOR has cured any such area of non-compliance. CONTRACTOR shall be responsible for the cost of any such Additional Billing Audit and Performance Review.

20.02 City Requested Program Review. The CITY reserves the right to require the CONTRACTOR to periodically conduct reviews of the SFD and MFD and Commercial Garbage, Recyclable Materials, and Organic Waste collection programs to assess one or more of the following performance indicators: average volume of recyclable materials per setout per customer, average volume of green waste and or food scraps per setout per customer, participation level, contamination levels, etc. Prior to the program evaluation review, CITY and CONTRACTOR shall meet and discuss the purpose of the review and agree on the method, scope, and date to be provided by the CONTRACTOR.

20.03 Cooperation with Other Program Reviews. If the CITY wants to collect program data, perform field work, conduct route audits to investigate customer participation levels and setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable Materials and Organic Waste collected in the CITY by the CONTRACTOR, the CONTRACTOR shall cooperate with the CITY or its agent(s). CONTRACTOR shall also cooperate with any waste generation studies conducted by the CITY or its agent(s).

ARTICLE 21. Performance Bond

21.01 Performance Bond. A Performance bond must be furnished by the CONTRACTOR within fifteen (15) calendar days of notification to the CONTRACTOR that that the Agreement has been executed. The CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form with language that is acceptable to the CITY, for the

faithful performance of this Agreement and all obligations arising hereunder in an amount of _____ Dollars (\$XXX,000.00).

21.02 Renewal. Beginning April 1, 20xx, and each April 1st thereafter, CONTRACTOR shall have the performance bond renewed annually and be executed by a surety company that is acceptable to the CITY; an admitted surety company licensed to do business in the State of California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States.

21.03 Letter of Credit. As an alternative to the performance bond required by Article 21.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Article 21.01. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to business in the state of California, in the CITY'S name, and be callable at the discretion of the CITY. Nothing in this Article shall, in any way, obligate the CITY to accept a letter of credit in lieu of the performance bond.

ARTICLE 22. Insurance

22.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with CONTRACTOR'S performance of work or services under this Agreement. CONTRACTOR'S performance of work or services shall include performance by CONTRACTOR'S employees, agents, representatives and subcontractors.

22.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

22.02.1 Commercial General Liability: Insurance Services Office (ISO) Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002. Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto".

22.02.2 Workers' Compensation Insurance: as required by the State of California and Employers Liability Insurance.

22.02.3 Hazardous Waste and Environmental Impairment Liability Insurance.

22.02.4 Employee Blanket Fidelity Bond.

22.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no less than:

22.03.1 Commercial General Liability: **Three Million Dollars (\$3,000,000.00)** combined single limit per occurrence **Five Million Dollars (\$5,000,000.00)** annual aggregate; including products and completed operations coverage.

22.03.2 Automobile Liability: **Three Million Dollars (\$3,000,000.00)** combined single limit per accident for bodily injury and property damage.

22.03.3 Workers' Compensation and Employers Liability: Workers' Compensation insurance as required by the State of California, with statutory limits, and Employers Liability insurance with limits of **One Million Dollars (\$1,000,000.00)** per accident.

22.03.4 Hazardous Waste and Environmental Impairment Liability: **Three Million Dollars (\$3,000,000.00)** each occurrence/**Five Million Dollars (\$5,000,000.00)** policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement

of CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants.

22.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, CITY. CITY shall not withhold approval of any Deductible or Self-Insured Retention amounts where CONTRACTOR can demonstrate a successful history of managing such Deductibles or Self-Insured Retention amounts.

22.05 Endorsements. The liability policies are to contain, or be endorsed to contain, the following provisions:

22.05.1 The CITY, its officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; liability arising out of work or operations performed by or on behalf of the CONTRACTOR, including material parts or equipment furnished in connection with such work or operations; and with respect to Hazardous Waste, Pollution and/or Environmental Impairment Liability.

22.05.2 CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

22.05.3 The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

22.05.4 The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion, or documentation that the CONTRACTOR carries environmental pollution liability coverage for solid waste transported by the CONTRACTOR. The Automobile Liability policy shall also be endorsed to add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

22.06 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

22.07 Cancellation. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

22.07.1 Any failure to comply with reporting provisions of the policies shall not affect CONTRACTOR'S obligations to CITY, its officers, officials, employees, agents or volunteers.

22.08 Claims Made Coverage. If General Liability or Hazardous Waste and Environmental Impairment Liability coverage is written on a claims-made form:

22.08.1 The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

22.08.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work

22.08.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

22.08.4 A copy of the claims reporting requirements must be submitted to the CITY for review.

22.09 Acceptability of Insurers. Insurance is to be placed with insurers admitted to transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution and/or Environmental Impairment and/or errors and omission coverage are not available from an admitted insurer, the coverage may be written with the CITY's permission, by a non-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher

22.10 Verification of Coverage. CONTRACTOR shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

22.11 Subcontractors. CONTRACTOR shall include all subcontractors as insureds under its policies or require and verify that all subcontractors maintain insurance meeting all the requirements of this contract.

22.11.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.

City Representative or His/Her Designee

City Hall

Address

Address

22.12 Modification of Insurance Requirements. The insurance requirements provided in this Agreement may be modified or waived by the CITY, in writing, upon the request of CONTRACTOR if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

ARTICLE 23. Indemnification

23.01 Indemnification of the CITY. CONTRACTOR shall defend, with counsel acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers agents and assignees (indemnities), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third

parties) arising or resulting from or in any way connected with: (i) the operation of the CONTRACTOR, its agents, employees, contractors, and/or subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees, contractors, and/or subcontractors to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the acts of CONTRACTOR, its agents, employees, contractors, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suit injury, death or damage is also caused in part by any of the indemnitees' negligence.

23.02 The CONTRACTOR's obligation to defend, hold harmless, and indemnify shall not be excused because of the CONTRACTOR's inability to evaluate liability or because the CONTRACTOR evaluates liability and determines that the CONTRACTOR is not liable to the claimant. The CONTRACTOR must respond within thirty (30) days to the tender of a claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If the CONTRACTOR fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the CONTRACTOR by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until final disposition has been made or the claim or suit for damages, or until the CONTRACTOR accepts or rejects the tender of defense, whichever occurs first.

23.02.1 With respect to third party claims against the CONTRACTOR, the CONTRACTOR waives any and all rights of any type to express or implied indemnity against the Indemnities.

23.03 Hazardous Substances Indemnification. The CONTRACTOR shall indemnify, defend with counsel acceptable to the CITY, protect and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, hazardous materials response mediation and removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions of CONTRACTOR, or its agents, including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where CONTRACTOR transports, stores, or disposes of Garbage pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless and indemnify the CITY from liability.

23.04 CalRecycle Diversion Goals. CONTRACTOR agrees to protect, indemnify, hold harmless, and defend CITY with counsel selected by CONTRACTOR and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or penalties imposed by the California Department of Resources Recycling and Recovery ("CalRecycle") if the diversion goals specified in California Public Resources Code Section

41780 as of the date hereof and hereafter throughout are not met by the CITY with respect to the materials Collected by CONTRACTOR and if the lack in meeting such goals are attributable to the failure of the CONTRACTOR to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement.

23.05 Maximum Service Rates. CONTRACTOR shall defend, with counsel acceptable to CITY hold harmless, and indemnify CITY, its officers, officials, employees, volunteers, agents and assignees from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the City's setting of Maximum Service Rates for Collection Services under this Agreement and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of Maximum Service Rates and fees for services provided by CONTRACTOR under and/or in connection with this Agreement, provided, however, that such obligation to defend, hold harmless and indemnify shall not apply to the imposition or payment of Solid Waste Fund Administrative Fees, Franchise Fees, or any other amounts payable to CITY under this Agreement.

23.06 Separate Counsel. CITY may elect to have separate legal counsel from CONTRACTOR at any time at its sole discretion, and in such case CONTRACTOR will pay one-half (1/2) of all fees and costs and charges for such separate legal counsel.

23.07 Consideration. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

23.08 Obligation. The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in Article 22 above.

23.09 Subcontractors. The CONTRACTOR shall require all subcontractors to enter into an Agreement containing the provisions set forth Articles 23.01, 23.02, 23.03, 23.04, 23.05, 23.06, 23.07, and Article 22 in its entirety and in the preceding subsection in which Agreement the subcontractor fully indemnifies the CITY in accordance with this Agreement.

23.10 Exception. Notwithstanding Articles, 23.01, 23.02 and 23.03, CONTRACTOR'S obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting solely from acts or omissions constituting willful misconduct or sole negligence on the part of the CITY its officers or employees.

23.11 Damage by CONTRACTOR. If CONTRACTOR'S employees or subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs, CONTRACTOR shall reimburse CITY for CITY'S cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR'S sole cost and expense.

ARTICLE 24. Default of Agreement

24.01 Termination. The CITY may cancel this Agreement, except as otherwise provided below in this Article, by giving the CONTRACTOR thirty (30) calendar days advance

written notice, to be served as provided in Article 41, upon the happening of any one of the following events:

24.01.1 The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

24.01.1.1 By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

24.01.2 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

24.01.3 The CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the liquidated damages or other monies due the CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

24.01.4 The CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

24.01.5 In the event that the monies due the CITY under Article 24.01.3 above or an unsatisfied final judgment under Article 24.01.4 above is the subject of a judicial proceeding, the CITY may, at its option call the Performance Bond, or hold the CONTRACTOR in default of this Agreement. All bonds shall be in the form acceptable to the City Attorney; or

24.01.6 The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement, including satisfactory conformance with the requirements of Article 20, the service levels prescribed herein, or any of the rules and regulations promulgated by the CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the City Representative relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice by the CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by the CONTRACTOR of written demand from the CITY to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, the CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time. However, notwithstanding anything contained herein to the contrary, for the failure of the

CONTRACTOR to provide Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work Day the CITY may secure the CONTRACTOR'S equipment, records and other property used or useful in providing Collection Services under this Agreement in order to provide interim Collection Services until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Agreement; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of the CITY under this Agreement to the CONTRACTOR shall cease and this Agreement may be deemed terminated by the CITY, and the CITY shall retain equipment, records and other property used in providing Collection Services on an interim basis until the CITY has made other suitable arrangements for the provision of Collection Services, which may include award of the Agreement to another contractor. Notwithstanding any other provision in this Agreement to the contrary, CITY'S right to take interim possession of, or make use of, any of CONTRACTOR'S equipment, including, without limitation, vehicles, Carts, Bins and containers, shall not allow the CITY to assign ownership of such vehicles, Carts, Bins and containers to an other contractor and CITY acknowledges that the CONTRACTOR'S lender has a security interest in such equipment.

24.01.7 The CONTRACTOR has defaulted, by failing or refusing to deliver Garbage to the CITY'S contracted Disposal Facility or the CITY'S contracted Organic Waste Processing Facility without prior written approval by the CITY to use an alternative disposal facility.

24.01.8 In the event that the Agreement is terminated, CONTRACTOR shall furnish the CITY with immediate access to all of its business records related to its customer and billing accounts for collection services.

24.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the CONTRACTOR regardless of whether the CONTRACTOR has corrected each individual condition of default, the CITY in its sole discretion determines that the CONTRACTOR shall be deemed a "habitual violator", in which case the CONTRACTOR shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The CITY shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. A history of liquidated damages imposed pursuant to Article 19 may be used as a basis for deeming the CONTRACTOR to be a habitual violator; however, any failure to have imposed liquidated damages where applicable shall not prevent use of the CONTRACTOR'S underlying failures from consideration for determining a habitual violator. In the event of any such subsequent default, the CITY may terminate this Agreement upon giving of final written notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the CITY'S written notice to the CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice the CONTRACTOR shall proceed to cease any further performance under this Agreement.

24.03 Effective Date. In the event of the aforesaid events specified above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified

in the CITY'S written notice to the CONTRACTOR and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the CITY under this Agreement to the CONTRACTOR shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The CONTRACTOR for failure to perform shall reimburse the CITY all direct and indirect costs of providing interim Collection Services.

24.04 Immediate Termination. CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the performance bond as required by this Agreement, or if CONTRACTOR fails to obtain or maintain insurance policies endorsements as required by this Agreement, or if CONTRACTOR fails to provide the proof of insurance as required by this Agreement, or if CONTRACTOR offers or gives any gift prohibited by CITY administrative policy.

24.05 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

24.06 Force Majeure. The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, or other industrial disturbances, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming the excuse from its obligations due to such event, to the extent such event has a significant and material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by CONTRACTOR'S employees or directed at CONTRACTOR or any of its subcontractors. Force Majeure shall include a Change in Law if such Change in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (ii) except as provided herein, no event which merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and (iii) no event, the effects of which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

ARTICLE 25. Modifications to the Agreement

25.01 Agreement Modifications and Changes in Law. The CITY and the CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Garbage, Recyclables, or Organic Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The CONTRACTOR agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Service Recipients of the CONTRACTOR located within the Service Area; provided, however that the CITY will not amend the Municipal Code in a way that is inconsistent with the Agreement unless compelled to do so by federal or state law. In the event any future change in law, modifications to the CITY Municipal Code, or directed changes by the CITY materially alters the obligations of the CONTRACTOR, then the affected compensation as established under this Agreement shall be

adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, the CITY and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Agreement under this Article. The CITY and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

25.01.1 Compensation Adjustments. In the event of a change in laws or regulations of any governmental agency that will require additional or different services to be provided by CONTRACTOR which are not otherwise covered by this Agreement, CONTRACTOR shall provide CITY with a written rate increase request for additional compensation to CONTRACTOR based on such additional or different services. If the proposed rate increase exceeds five percent (5%) and CITY does not agree with such rate increase, CITY, in addition to negotiating with CONTRACTOR may submit the matter to non-binding mediation upon the following terms and conditions in Article 25.06.1.

25.02 City-Directed Changes. CITY may direct CONTRACTOR to perform additional services (including new diversion programs, additional public education activities, etc.), eliminate programs, or modify the manner in which it performs existing services. Changes in the minimum diversion requirement set forth in Article 5 of this Agreement, direction of Garbage to a Disposal Facility other than that originally selected by the CITY, direction of Recyclable Materials or Organic Waste to a processing facility other than that selected by the CONTRACTOR, pilot programs and innovative services, which may entail new collection methods, targeted routing, different kinds of services, different types of collection vehicles, and/or new requirements for Service Recipients are included among the kinds of changes which CITY may direct. CONTRACTOR shall be entitled to an adjustment in its compensation for providing such additional or modified services but not for the preparation of its proposal to perform such services.

25.03 Service Proposal. Within thirty (30) calendar days of receipt of a request for a service change from the CITY, CONTRACTOR shall submit a proposal to provide such service. At a minimum, the proposal shall contain a complete description of the following:

- 25.03.1 Collection methodology to be employed (equipment, manpower, etc.).
- 25.03.2 Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- 25.03.3 Labor requirements (number of employees by classification).
- 25.03.4 Type of carts or bins to be utilized.
- 25.03.5 Provision for program publicity, education, and marketing.
- 25.03.6 Five (5) year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

25.04 CONTRACTOR acknowledges and agrees that CITY may permit other contractors or companies besides CONTRACTOR to provide additional Collection Services and such other services not otherwise contemplated if CONTRACTOR and CITY cannot agree on terms and conditions, including compensation adjustments, of such services in one hundred

twenty (120) calendar days from the date when CITY first requests a proposal from CONTRACTOR to perform such services.

25.05 Monitoring and Evaluation. If the CITY requests, the CONTRACTOR shall meet with the CITY to describe the progress of each new program and other service issues. If applicable, CONTRACTOR shall document the results of the new programs on a monthly basis, including at a minimum the tonnage diverted by material type, the end use or processor of the diverted materials and the cost per ton for transporting and processing each type of material and other such information requested by the CONTRACTOR and/or CITY necessary to evaluate the performance of each program.

25.05.1 At each meeting, the CITY and CONTRACTOR shall have the opportunity to discuss revisions to the program. The CITY shall have the right to terminate a program if, in its sole discretion, the CONTRACTOR is not cost effectively achieving the program's goals and objectives. Prior to such termination, the CITY shall meet and confer with the CONTRACTOR for a period of up to ninety (90) calendar days to resolve the CITY'S concerns. Thereafter, the CITY may utilize a third party to perform these services if the CITY reasonably believes the third party can improve on CONTRACTOR'S performance and/or cost. Notwithstanding these changes, CONTRACTOR shall continue the program during the ninety (90) day period and, thereafter, until the third party takes over the program.

25.06 Dispute Resolution. All disputes relating to service or compensation changes as specified in Articles 25.01, 25.02, or 25.03 of this Agreement shall be resolved by the following procedures:

25.06.1 Mediation. The parties shall first participate in non-binding mediation of any dispute arising under this Agreement (whether contract, tort, or otherwise), as provided hereafter:

25.06.1.1 The party desiring mediation shall first give written notice thereof to the other party to this Agreement, specifying the dispute to be mediated.

25.06.1.2 The mediation shall be held at _____, California, or at such other location as may be mutually agreed among the parties. The mediation shall be conducted according to and a mediator chosen pursuant to the rules of the American Arbitration Association.

25.06.1.3 At least ten (10) business days before the date of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to negotiate on behalf of the party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation.

ARTICLE 26. Legal Representation

26.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

ARTICLE 27. Financial Interest

27.01 Representation. CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

ARTICLE 28. Contractor's Personnel

28.01 Personnel Requirements. The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

28.01.1 The CITY may request the transfer of any employee of the CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

28.01.2 CONTRACTOR'S field operations personnel shall be required to wear a clean uniform shirt bearing the CONTRACTOR'S name. CONTRACTOR'S employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

28.01.3 Each driver of a collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

28.01.4 Each driver of a collection vehicle shall at all times comply with all applicable state and federal laws, regulations and requirements.

28.01.5 CONTRACTOR'S employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the CITY.

28.01.6 The CONTRACTOR'S name and the Customer Service telephone number shall be properly displayed on all collection vehicles.

ARTICLE 29. Exempt Waste

29.01 The CONTRACTOR shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by the CONTRACTOR shall be in strict compliance with all federal, state and local laws and regulations.

ARTICLE 30. Independent Contractor

30.01 In the performance of services pursuant to this Agreement, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other compensation or benefits, which accrue, to CITY employees and CONTRACTOR expressly waives any claim it may have or acquire to such compensation or benefits.

ARTICLE 31. Laws to Govern

31.01 The law of the State of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

ARTICLE 32. Consent to Jurisdiction

32.01 The parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Marin County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

ARTICLE 33. Assignment

33.01 No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by the CONTRACTOR without the express written consent of the CITY. The CITY shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Agreement made by the CONTRACTOR without the express written consent of the CITY shall be null and void and shall be grounds for the CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the CONTRACTOR, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the CITY under this Agreement to the CONTRACTOR shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.

33.02 The use of a subcontractor to perform services under this Agreement shall not constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received prior written authorization from the City Representative to subcontract such services and the City Representative has approved a subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole responsibility of CONTRACTOR. The City Representative shall have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in **Exhibit 4** to this Agreement are hereby approved by the CITY.

33.03 For purposes of this Article when used in reference to CONTRACTOR, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least fifty-one percent (51%) of CONTRACTOR'S assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of control of CONTRACTOR (with control being defined as ownership of more than fifty percent (50%) of CONTRACTOR'S voting securities); (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, subcontracting or lease-back payments, or other transaction which results in a change of control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of control of CONTRACTOR.

33.04 CONTRACTOR acknowledges that this Agreement involves rendering a vital service to CITY'S residents and businesses, and that CITY has selected CONTRACTOR to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its garbage, recyclable materials and organic waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best garbage, recycling and organic waste management practices, and (ii) CONTRACTOR'S financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing CONTRACTOR to perform the services to be rendered by CONTRACTOR under this Agreement.

ARTICLE 34. Compliance with Laws

34.01 In the performance of this Agreement, CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the Municipal Code of the City of

34.02 CITY shall provide written notice to CONTRACTOR of any planned amendment of the CITY Municipal Code that would substantially affect the performance of CONTRACTOR'S services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 35. Permits and Licenses

35.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. CONTRACTOR shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative.

ARTICLE 36. Ownership of Written Materials

36.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or CONTRACTOR in

connection with the services to be performed under this Agreement, whether developed directly or indirectly by CITY or CONTRACTOR shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City Representative. This Article 36 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 37. Waiver

37.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

ARTICLE 38. Prohibition Against Gifts

38.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY'S prohibition against the acceptance of any gift by a CITY officer or designated employee. CONTRACTOR shall not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 39. Point of Contact

39.01 The day-to-day dealings between the CONTRACTOR and the CITY shall be between the CONTRACTOR and the City Representative.

ARTICLE 40. Conflict of Interest

40.01 CONTRACTOR shall comply with CITY requirements for conflict of interest and will file all required disclosure statements.

ARTICLE 41. Notices

41.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

Name, Title
Address
Address
Telephone: (999) 999-9999
Facsimile: (999) 999-9999
E-mail: email

As to the CONTRACTOR:

Name, Title

Address
Address
Telephone: (999) 999-9999
Facsimile: (999) 999-9999
E-mail: email

41.02 Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. Receipt is deemed to have taken place within three (3) working days of notice mailed by U.S. Postal Service return receipt requested. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

41.03 Notice by CITY to CONTRACTOR of a collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S local office with confirmation sent as required above by the end of the Work Day.

ARTICLE 42. Transition to Next Contractor

42.01 In the event CONTRACTOR is not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Service Recipients; providing a complete inventory of all carts and bins; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking all actions necessary to transfer ownership of carts and bins, as appropriate, to CITY; including transporting such containers to a location designated by the City Representative; coordinating collection of materials set out in new containers if new containers are provided for a subsequent Agreement and providing other reports and data required by this Agreement.

ARTICLE 43. Contractor's Records

43.01 CONTRACTOR shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum

period of five (5) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.

43.02 CONTRACTOR shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

43.03 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Representative, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S address indicated for receipt of notices in this Agreement.

43.04 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

ARTICLE 44. Entire Agreement

44.01 This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

ARTICLE 45. Severability

45.01 If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 46. Right to Require Performance

46.01 The failure of the CITY at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 47. All Prior Agreements Superseded

47.01 This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements, contracts and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, Agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, Agreements or contracts, whether oral or written.

ARTICLE 48. Headings

48.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 49. Exhibits

49.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

ARTICLE 50. Representations and Warranties

The CONTRACTOR, by acceptance of this Agreement, represents and warrants the conditions presented in the Article.

50.01 Corporate Status. The CONTRACTOR is a corporation duly organized, validly existing and in good standing under the laws of the State of California ("State"). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

50.02 Corporate Authorization. CONTRACTOR has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that they have the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the CONTRACTOR.

50.03 Agreement Will Not Cause Breach. To the best of CONTRACTOR'S knowledge after responsible investigation, the execution or delivery of this Agreement or the performance by CONTRACTOR of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to CONTRACTOR; or (ii) any term or condition of any judgment, order, decree, of any court, administrative agency or other governmental authority, or any Agreement or instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default hereunder.

50.04 No Litigation. To the best of CONTRACTOR'S knowledge after responsible investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate would:

50.04.1 Materially adversely affect the performance by CONTRACTOR of its obligations hereunder;

50.04.2 Adversely affect the validity or enforceability of this Agreement; or

50.04.3 Have a material adverse effect on the financial conditions of CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR'S performance under this Agreement.

50.05 No Adverse Judicial Decisions. To the best of CONTRACTOR'S knowledge after responsible investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

50.06 No Legal Prohibition. To the best of CONTRACTOR'S knowledge after reasonable investigation, there is no Applicable Law in effect on the date CONTRACTOR signed this Agreement that would prohibit the CONTRACTOR'S performance of its obligations under this Agreement and the transactions contemplated hereby.

50.07 Contractors Statements. The contractor's proposal and other supplemental information submitted to the City, which the City has relied on in awarding and entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

50.08 CONTRACTOR'S Investigation. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

50.09 Ability to Perform. Contractor possesses the business, professional, and technical expertise to collect, Transport, and Process the Garbage, Recyclable Materials, Organic Waste, and Bulky Waste generated in the CITY. Contractor possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

50.10 Voluntary Use of Approved Disposal Location and Approved Composting Site. The CONTRACTOR, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facility for the purposes of Disposing of all Garbage collected in the CITY and Approved Composting Site for Composting all Organic Waste collected in the CITY. Such decision by contractor in no way constitutes a restraint of trade notwithstanding any Change in law regarding flow control limitations or any definition thereof.

50.11 Recognizing Labor Rights. Contractor recognizes, and agrees to continue to recognize, the right of its employees to peacefully organize and to file a valid petition seeking a lawful election conducted by the National Labor Relations Board. Such secret ballot election would determine if a majority of the subject employees want a labor organization to be their exclusive representative in collective bargaining with the CONTRACTOR. CONTRACTOR agrees to engage in good faith negotiations with any current and duly elected labor organization of the subject employees, and to meet at reasonable times to discuss wages, hours and other terms and conditions of employment. CONTRACTOR also represents that during negotiations with such duly elected labor organization, if necessary, it would support the use of a federal mediator and a reasonable cooling off period, if requested in writing by either party.

ARTICLE 51. Effective Date

This Agreement shall become effective at such time as it is properly executed by the CITY and the CONTRACTOR and the CONTRACTOR shall begin Collection Services, as covered herein, as of July 1, 20xx.

Exhibit 1a					
Maximum Service Rates – SFD Services					
A. CURBSIDE COLLECTION SERVICE					
	Garbage Cart Sizes (gallons)	20	32	64	96
1	MONTHLY CURBSIDE RATE	\$0.00	\$0.00	\$0.00	\$0.00
2	Additional Curbside Garbage Cart – (added to Line A2)	\$0.00	\$0.00	\$0.00	\$0.00
B. ON-PREMISE COLLECTION SERVICE					
1	MONTHLY ON-PREMISE RATE (5 – 100 ft)	\$0.00	\$0.00	\$0.00	\$0.00
2	Additional On-Premise Garbage Cart – (added to Line B2)	\$0.00	\$0.00	\$0.00	\$0.00
3	Additional Walk-in Distance – Each 100 feet (add to line B1 or B2)	\$0.00	\$0.00	\$0.00	\$0.00
C. ADDITIONAL BULKY WASTE COLLECTION					
1	Additional On-Call Bulky Waste Collection (Individual Large Items)	\$0.00	Each additional large item (over 3 Large Items per Bulky Waste Collection)		
3	Additional On-Call Bulky Waste Collection (Loose)	\$0.00	Per cubic yard/occurrence (over 2 Bulky Waste Collections per Agreement Year)		
2	Collection of Large Items Containing Freon	\$0.00	Each item/each occurrence		
D. ADDITIONAL CART EXCHANGE OR REPLACEMENT					
1	Additional Garbage Cart Exchange	\$0.00	Each occurrence		
E. ON-CALL HHW COLLECTION					
1	On-Call HHW Collection	\$0.00	Each occurrence		
F. DISPOSAL COST PER TON COST					
	Disposal Facility Charge Per Ton	\$0.00	Facility Name		

Exhibit 1b						
Maximum Service Rates – Commercial and MFD Services						
Container Size	Collection Frequency					
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week
32 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
64 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
96 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
6 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Bin Push Rates (rate multiplied by collection frequency)		0 - 25 feet		\$0.00/month for each 25 feet increment over the first 25 feet		
		No Charge				
Disposal Charge Per Ton			\$0.00	Facility Name		
Organic Waste Processing Charge Per Ton			\$0.00	Facility Name		
Mixed C&D, Inerts, Green Waste, Wood Waste Processing Charge Per Ton			\$0.00	Facility Name		
On-Call Bulky Waste Collection (Loose)				\$0.00	Per cubic yard/occurrence	
On-Call Bulky Waste Collection (Individual Large Items)				\$0.00	Each item/each occurrence	
On-Call Bulky Waste – Large Items Containing Freon				\$0.00	Each item/each occurrence	
Charge for Opening Locked Gate				\$0.00	Per month	
Charge for CONTRACTOR supplied lock				\$0.00	Each lock	
Charge for installing lock bar				\$0.00	Each locking bar	
Charge for special bin delivery				\$0.00	Each special bin	
Charge for extra bin service same day				\$0.00	Each occurrence	
Extra Bin Cleaning				\$0.00	Each occurrence	
Additional Garbage Bin Exchange				\$0.00	Each occurrence	
Additional Bin Garbage Replacement				\$0.00	Each occurrence	
Charge for collecting manure				0.00% of Garbage rate		
Charge for extra day bin service on regular collection day				0.00% of Monthly Rate		
Charge for extra bin service not on regular collection day				0.00% of Monthly Rate		

Exhibit 1c			
Maximum Service Rates – SFD, MFD and Commercial Debris Box Services			
10 CY Debris Box	\$0.00	Per Pull	10 CY Compactor \$0.00 Per Pull
15 CY Debris Box	\$0.00	Per pull	15 CY Compactor \$0.00 Per Pull
20 CY Debris Box	\$0.00	Per pull	20 CY Compactor \$0.00 Per Pull
30 CY Debris Box	\$0.00	Per pull	30 CY Compactor \$0.00 Per Pull
40 CY Debris Box	\$0.00	Per pull	40 CY Compactor \$0.00 Per Pull
Disposal Charge Per Ton	\$0.00	Facility Name	
Organic Waste Processing Charge Per Ton	\$0.00	Facility Name	
Mixed C&D, Inerts, Green Waste, Wood Waste Processing Charge Per Ton	\$0.00	Facility Name	
Demurrage Per Charge (not dumped every 7 days)	\$0.00	Per week	
Per hour Stand-by Charge (box not ready to be pulled)	\$0.00	Per hour	
Saturday Service	\$0.00	Per Pull	
Charge for Opening Locked Gate	\$0.00	Per month	
Notes:			
All 10, 20, 30, 40 CY debris boxes and compactors are pull rates only; disposal or processing will be based on actual disposal processing and the Franchise Fee will be 0.00% of the gross receipts per box (including collection, processing or disposal). The total customer rate will be the total cost for the collection, processing or disposal and the Franchise Fee.			

Exhibit 1d						
Maximum Service Rates – City Services						
Container Size	Collection Frequency					
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week
32 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
64 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
96 Gallon	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
6 CY BIN	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10 CY Debris Box	\$0.00	Per Pull		10 CY Compactor	\$0.00	Per Pull
15 CY Debris Box	\$0.00	Per pull		15 CY Compactor	\$0.00	Per Pull
20 CY Debris Box	\$0.00	Per pull		20 CY Compactor	\$0.00	Per Pull
30 CY Debris Box	\$0.00	Per pull		30 CY Compactor	\$0.00	Per Pull
40 CY Debris Box	\$0.00	Per pull		40 CY Compactor	\$0.00	Per Pull
Public Containers Collection (as included in Exhibit 2)	\$0.00/month (\$0.00/ per 12 months) (7 days/week)					
Green Waste Drop-off	\$0.00/ton	Facility Name				
Disposal Charge Per Ton	\$0.00/ton	Facility Name				
Organic Waste Processing Charge Per Ton	\$0.00/ton	Facility Name				
Mixed C&D, Inerts, Green Waste, Wood Waste Processing Charge Per Ton	\$0.00/ton	Facility Name				
Notes:						
All 10, 20, 30, 40 CY debris boxes and compactors are pull rates only; disposal or processing will be based on actual disposal processing and the Franchise Fee will be 0.00% of the gross receipts per box (including collection, processing or disposal). The total customer rate will be the total cost for the collection, processing or disposal and the franchise fee.						

Exhibit 1e	
Maximum Service Rates – Emergency Service Rates - Employees	
Labor Position	Hourly Rate
As needed	\$0.00

Exhibit 1f		
Maximum Service Rates – Emergency Service Rates - Equipment		
Labor Position or Equipment Type	Make & Model	Hourly Rate
Truck and One person	As needed	\$0.00

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Exhibit 2 CITY FACILITIES	
Building / Facility	Estimated Service Level
All City Building and Facilities	
City Public Containers	
City Directed Code Enforcement	
Abandoned Waste	

Exhibit 3 APPROVED FACILITIES

Exhibit 4 APPROVED SUBCONTRACTORS

Exhibit 5 CITY-SPONSORED EVENTS	
CONTRACTOR will work with event organizers to promote Zero Waste events. The list below represents the maximum number of events that may be eligible to receive services in accordance with Article 10.03.2 of this Agreement.	
Event/Activity	Estimated Service Level

**Exhibit 6
TRANSITION PLAN**

**Exhibit 7
PUBLIC EDUCATION PLAN**

**Exhibit 8
DIVERSION PLAN**

<p>Exhibit 9 CUSTOMER SERVICE PLAN</p>

<p>Exhibit 10 COLLECTION SERVICE OPERATIONS PLAN</p>

<p>Exhibit 11 HHW COLLECTION PLAN</p>

<p>Exhibit 12 COMMUNITY INVOLVEMENT PLAN</p>

<p>Exhibit 13 SCHOOL RECYCLING PLAN</p>

<p>Exhibit 14 COMMUNITY REUSE E-NETWORK PLAN</p>

<p>Exhibit 15 LIST OF HARD TO SERVICE AREAS/STREETS</p>

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Exhibit 16 Vehicle Specifications: Select Vehicle Type			
1. Material to be Collected	<input type="checkbox"/> Garbage	<input type="checkbox"/> Recyclables	<input type="checkbox"/> Organic Waste
2. Manufacturer and Model:			
a. Cab and Chassis			
b. Body			
c. Engine			
d. Transmission			
3. Cab and Chassis:			
a. Cab Height			inches
b. Number of Axles			
c. Overall Length With Body Mounted.....			inches
4. Body:			
a. Type of Body			
b. Rated Capacity			cu. Yd.
c. Practical or Net Capacity			cu. Yd.
d. No. of collection Compartments			
e. Net Capacity of Each Compartment.....			cu. Yd.
f. Overall Body Length.....			inches
g. Body Height.....			inches
h. Body Width			inches
i. Loading Height Above Ground	Minimum		inches
.....	Maximum		inches
5. Weight	GVW	lbs.	Tare lbs.
6. Will the vehicles be owned, leased or other?			

Exhibit 16 Vehicle Specifications: Select Vehicle Type		
7. Fuel type		
8. Fuel usage	highway	MPG
	on route	MPG
9. Emissions rating:		
a. CO		g/bhp/hr
b. HC (total hydrocarbons)		g/bhp/hr
c. NOx		g/bhp/hr
d. Particulate Matter		g/bhp/hr
10. Safety Features		
11. Color		

Exhibit 17 Container Specifications					
Material to be collected ... <div style="display: flex; flex-direction: column; justify-content: space-between; margin-top: 10px;"> <div style="display: flex; justify-content: space-between;"> Garbage <input type="checkbox"/> Black </div> <div style="display: flex; justify-content: space-between;"> Recyclables <input type="checkbox"/> Blue </div> <div style="display: flex; justify-content: space-between;"> Organic Waste <input type="checkbox"/> Green </div> <div style="display: flex; justify-content: space-between;"> "Kitchen" Food Waste Pail <input type="checkbox"/> Color to complement Organic Waste Cart (2.5 gallon capacity) </div> </div>					
Manufacturer					
Material of Construction					
Recycled Content (percentage)					
	Kitchen Food Waste Pail	Carts			
Container Types & Size		20 gal	32 gal	64 gal	96 gal
Durability (in service years)					
Dimensions of Each Cart					
Length					
Width					
Height					
Wheel Size (carts only)					
Manufacturer's warranty (10-year minimum for carts)					
Labeling					

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